ESTTA Tracking number:

ESTTA1584 06/12/2013

Filing date:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91205924
Party	Plaintiff Monster Energy Company
Correspondence Address	BRIGETTE B CHAPUT KNOBBE MARTENS ET AL 2040 MAIN ST FL 14 IRVINE, CA 92614 UNITED STATES efiling@knobbe.com, brigette.chaput@knobbe.com
Submission	Motion to Compel Discovery
Filer's Name	Brigette B. Chaput
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Signature	/Brigette B. Chaput/
Date	06/12/2013
Attachments	Exhibit 1.pdf(633591 bytes) Exhibit 2.pdf(941531 bytes) Exhibit 3.pdf(1205272 bytes) Exhibit 4.pdf(1938990 bytes) Exhibit 5.pdf(2205368 bytes) Exhibits 6-7.pdf(380913 bytes) Exhibits 8-9.pdf(753031 bytes) Exhibits 10-11.pdf(303283 bytes) Exhibit 12 Part 1.pdf(1914432 bytes) Exhibit 12 Part 2.pdf(2414769 bytes) Exhibit 12 Part 3.pdf(2258711 bytes) Exhibit 12 Part 4.pdf(1628879 bytes) Exhibit 13-16.pdf(812195 bytes) Signed Declaration of Emily Sauter - HANBEV.1346M.pdf(221649 bytes) Final Motion to Compel - HANBEV.1346M.pdf(151632 bytes)

EXHIBIT 1

HANBEV.1346M TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MONSTER ENERGY COMPANY,) Opposition No.: 91205924
Opposer,) Serial No.: 85/508374
v.	Ж
CHIH, LI-WEI,)) Mark:
Applicant.))

OPPOSER'S FIRST SET OF INTERROGATORIES NOS. 1-28

Pursuant to the Rules of Practice of the United States Trademark Trial and Appeal Board and the applicable Federal Rules of Civil Procedure, Opposer MONSTER ENERGY COMPANY hereby requests that Applicant Li-Wei Chih within thirty (30) days, answer separately and fully, in writing and under oath, each of the following Interrogatories.

DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

- 1. The terms "Applicant" or "You" shall mean Li-Wei Chih, and any company or entity in which Li-Wei Chih is a manager, director, officer, or owner, and any present or former principal, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any parent, subsidiary, division, predecessor, successor, affiliate or licensee.
- 2. The term "Opposer" shall mean Monster Energy Company, and any present or former principal, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any parent, subsidiary, division, predecessor, successor, affiliate or licensee.

- 3. The term "person" shall include both natural persons and corporate or other business entities whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents, and attorneys.
- 4. The term "document" shall mean any tangible thing upon which information is or has been stored, recorded, or communicated, and any written, printed, typed, and visually or aurally reproduced material of any kind, whether or not privileged, including, but not limited to, letters, notes, memoranda, e-mail, invoices, purchase orders, records, minutes, bills, contracts, agreements, orders, receipts, drawings or sketches, photographs, tapes or disks capable of being mechanically read, advertising or promotional literature, operating manuals or instructions, bulletins, cables or telegrams, tapes or other recordings, test data, electronically stored media, HTML code, website pages and report, and all other media encompassed by Federal Rule of Civil Procedure 34(a).
- 5. The term "thing" shall mean all tangible objects of any type, composition, construction or nature.
- 6. The terms "and" and "or" shall be construed both conjunctively and disjunctively and the plural shall be construed as the singular, and vice versa, as necessary and in order to bring within the scope of these Interrogatories any information, documents, or things that might otherwise be construed to be outside their scope.
- 7. The term "trademark" or "mark" includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.
- 8. "Applicant's Mark" shall mean and refer to the mark that is the subject of U.S. Trademark Application Serial No. 85/508374
 - 9. The term "Claw Icon" shall mean and refer to Opposer's mark.

"Opposer's Marks" shall mean and refer to Opposer's marks identified in its Notice of Opposition in this proceeding, including the Claw Icon mark.

- 10. The term "communication(s)" includes the disclosure, transfer or exchange of information by any means written, verbal, electronic or otherwise.
- 11. The phrase "Notice of Opposition" shall refer to the Notice of Opposition filed by Opposer in this proceeding with the TTAB on July 3, 2012.
- 12. The phrase "Applicant's Goods" shall mean the goods identified in U.S. Trademark Application Serial Number 85/508374, namely: "Baseball caps and hats; Golf caps; Hats; Hooded sweat shirts; Knitted caps; Sports caps and hats; Sweaters; T-shirts; Wearable garments and clothing, namely, shirts" in Class 25.
- 13. The phrase "Applicant's Application" shall mean U.S. Trademark Application Serial Number 85/508374.

GENERAL INSTRUCTIONS

- 1. In multi-part Interrogatories, the separate parts of such Interrogatories are to be read in context of the entire Interrogatory, but each part is to be answered separately.
- 2. All requests contained in the following Interrogatories to identify a person are to be answered by providing sufficient information to enable the undersigned to contact the person by telephone, mail, and to serve legal documents on such person. If such a person is a natural person, state his or her:
 - a) full name;
 - b) current business and residence addresses, including telephone numbers;
 - c) present employer, occupation and position;
 - d) a brief description of the job responsibilities of such person; and
- e) a brief description of the responsibilities of such person with the pertinent organization.

If such a person is other than a natural person, state:

- a) the full name or designation of the entity;
- b) the legal classification of the entity (e.g., corporation, partnership, etc.), giving the state of incorporation where appropriate;

- c) the principal place of business;
- d) the current or last known address and telephone number of the entity; and
- e) any other information reasonably necessary to permit efficient contact with the entity.
- 3. If you claim that any information requested is privileged, please provide all information falling within the scope of the Interrogatory which is not privileged, and identify with sufficient particularity for purposes of a Motion to Compel a Response or Production of each item of information, document or thing, separately, with respect to which you claim a privilege, and state:
 - a) the basis on which the privilege is claimed;
 - b) the author of the document;
- c) each individual or other person to whom the document, or copy thereof, was sent or otherwise disclosed; and
 - d) the date of the document.

You are not requested to provide privileged information or information for which you claim privileged, but only to identify such information, document or thing.

4. Applicant's responses to the following Interrogatories are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify all persons with knowledge about how Applicant's Mark was created, conceived, selected, cleared, adopted, or acquired and the substance of each person's knowledge.

INTERROGATORY NO. 2:

Identify the person(s) with the most comprehensive knowledge of Your past, present, and planned use of Applicant's Mark in the U.S., including the first use of that mark.

INTERROGATORY NO. 3:

Describe in detail the circumstances surrounding Applicant's selection of Applicant's Mark, including describing why and how Applicant's Mark was selected and identifying the dates Applicant's Mark was selected.

INTERROGATORY NO. 4:

Identify all alternative marks that were considered, but ultimately rejected, by Applicant prior to the adoption of Applicant's Mark.

INTERROGATORY NO. 5:

Describe each search or investigation conducted by or on behalf of You in connection with Applicant's Mark or any variation thereof, including, but not limited to, any search of the records of the United States Patent and Trademark Office or of any other records or publications.

INTERROGATORY NO. 6:

Describe the process by which You selected and adopted Applicant's Mark including, but not limited to, the steps You took to determine You could use and register the mark, the reasons for why You selected or adopted that mark, how the mark was first used in commerce including the goods and services, and the dates of first use for each good or service.

INTERROGATORY NO. 7:

For each product listed in Applicant's Application, describe the circumstances surrounding the first sale of that product, including, but not limited to, the date when You first sold that product, the person or entity that you contend sold the product, the person or entity that you contend purchased the product, the retail prices charged for the product, and the person(s) most knowledgeable about those sales.

INTERROGATORY NO. 8:

For any uses of the mark not identified in response to Interrogatory No.7, identify the dates of that use and describe that use including, but not limited to, describing the circumstances surrounding the first use of the marks in that manner by You, and identifying all

documents evidencing the first use of the marks in that manner and all persons knowledgeable about that use.

INTERROGATORY NO. 9:

Describe each way Applicant's Mark is or will be used in connection with each good and/or service identified in response to Interrogatory Nos. 7 and 8, including but not limited to the size, placement, and coloring of the mark.

INTERROGATORY NO. 10:

Describe in detail the actual or intended demographics of the purchasers for the goods and/or services sold or offered in connection with Applicant's Mark.

INTERROGATORY NO. 11:

Describe in detail the trade channels, including, but not limited to, wholesale and retail channels, through which Applicant provides to consumers and/or plans to provide to consumers the goods and/or services sold or offered in connection with Applicant's Mark.

INTERROGATORY NO. 12:

Identify each geographic area in which Applicant has provided and/or plans to provide goods and/or services in connection with Applicant's Mark.

INTERROGATORY NO. 13:

Identify all past or present customers (including, for example, retail, Internet, mail order, and/or wholesale) of the goods and/or services sold or offered in connection with Applicant's Mark.

INTERROGATORY NO. 14:

Separately for each good and/or service sold or offered in connection with Applicant's Mark, state the total sales (in units and dollars) on a monthly basis from the date of first sale to the present.

INTERROGATORY NO. 15:

For each product or service sold or offered in connection with Applicant's Mark, state the average wholesale and retail price or intended average wholesale and retail price.

INTERROGATORY NO. 16:

Describe in detail all manners in which the goods and/or services sold or offered in connection with Applicant's Mark have been advertised or promoted and/or plan to be advertised or promoted.

INTERROGATORY NO. 17:

Identify the amount Applicant has spent on advertising or promoting Applicant's Mark from the date of first use or conception to the present.

INTERROGATORY NO. 18:

Describe in detail the circumstances surrounding Applicant's awareness of Opposer's Marks, including how and when Applicant first became aware of Opposer's Marks.

INTERROGATORY NO. 19:

Describe each search or investigation conducted by or on bchalf of You in connection with, or concerning, Opposer's Marks or any variation thereof, including, but not limited to, any search of the records of the United States Patent and Trademark Office or of any other records or publications.

INTERROGATORY NO. 20:

Describe any instances of an inquiry or comment regarding an association between Applicant's Goods on the one hand, and Opposer's products bearing Opposer's Marks, including the Claw Icon mark, on the other hand, including identifying all persons having knowledge thereof and all documents relating thereto.

INTERROGATORY NO. 21:

Describe the factual bases supporting Applicant's allegation in paragraph 1 of Applicant's Affirmative Defenses that "Opposer has failed to state a claim upon which relief can be granted."

INTERROGATORY NO. 22:

Describe the factual bases supporting Applicant's allegation in paragraph 2 of Applicant's Affirmative Defenses that "[t]here is no likelihood of confusion with Opposer's mark to bar registration of Applicant's mark under Lanham Act §2(d)."

INTERROGATORY NO. 23

Describe the factual bases supporting Applicant's allegation in paragraph 3 of Applicant's Affirmative Defenses that "[t]here is no dilution of Opposer's mark by Applicant's mark under Lanham Act §43(c)."

INTERROGATORY NO. 24

Describe in detail the circumstances surrounding Applicant's selection and use of the wording "UNLEASH YOUR INNER MONSTER", including the first use of that wording.

INTERROGATORY NO. 25

Describe in detail the circumstances surrounding Applicant's selection and use of the

, in

design

, including the first use of that design.

INTERROGATORY NO. 26

Identify each person whom Applicant expects to call as a witness to give evidence in this proceeding, and for each such person, state the facts and subject matter about which they are expected to testify.

INTERROGATORY NO. 27

Identify each person who participated in the preparation of the responses to these Interrogatories.

INTERROGATORY NO. 28

Identify all documents referenced or relied upon in preparing Applicant's responses to these Interrogatories.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 8, 2013

By: Wild V & Steven J. Nataupsky

Lynda J. Zadra-Symes

Brigette B. Chaput

2040 Main Street

Fourteenth Floor

Irvine, CA 92614

(949) 760-0404

Attorneys for Opposer,

Monster Energy Company

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES NOS. 1-28 upon Applicant's counsel by e-mail to ebrown1@suffolk.edu and delivery by hand, on March 11, 2013, addressed as follows:

EVE BROWN

SUFFOLK UNIVERSITY LAW SCHOOL 120 TREMONT ST STE 190-J BOSTON, MA 02108-4977 UNITED STATES

Sabrina Jacob

14809997 020713 HANBEV.1346M TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

)
MONSTER ENERGY COMPANY,) Opposition No.: 91205924)
Opposer,	Serial No.: 85/508374
v.	М
CHIH, LI-WEI,	Mark:
Applicant.))

OPPOSER'S SECOND SET OF INTERROGATORIES NOS. 29-30

Pursuant to the Rules of Practice of the United States Trademark Trial and Appeal Board and the applicable Federal Rules of Civil Procedure, Opposer MONSTER ENERGY COMPANY hereby requests that Applicant Li-Wei Chih within thirty (30) days, answer separately and fully, in writing and under oath, each of the following Interrogatories.

DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

- 1. The terms "Applicant" or "You" shall mean Li-Wei Chih, and any company or entity in which Li-Wei Chih is a manager, director, officer, or owner, and any present or former principal, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any parent, subsidiary, division, predecessor, successor, affiliate or licensee.
- 2. The term "Opposer" shall mean Monster Energy Company, and any present or former principal, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any parent, subsidiary, division, predecessor, successor, affiliate or licensee.

- 3. The term "person" shall include both natural persons and corporate or other business entities whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents, and attorneys.
- 4. The term "document" shall mean any tangible thing upon which information is or has been stored, recorded, or communicated, and any written, printed, typed, and visually or aurally reproduced material of any kind, whether or not privileged, including, but not limited to, letters, notes, memoranda, e-mail, invoices, purchase orders, records, minutes, bills, contracts, agreements, orders, receipts, drawings or sketches, photographs, tapes or disks capable of being mechanically read, advertising or promotional literature, operating manuals or instructions, bulletins, cables or telegrams, tapes or other recordings, test data, electronically stored media, HTML code, website pages and report, and all other media encompassed by Federal Rule of Civil Procedure 34(a).
- 5. The term "thing" shall mean all tangible objects of any type, composition, construction or nature.
- 6. The terms "and" and "or" shall be construed both conjunctively and disjunctively and the plural shall be construed as the singular, and vice versa, as necessary and in order to bring within the scope of these Interrogatories any information, documents, or things that might otherwise be construed to be outside their scope.
- 7. The term "trademark" or "mark" includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.
- 8. "Applicant's Mark" shall mean and refer to the mark that is the subject of U.S. Trademark Application Serial No. 85/508374
 - 9. The term "Claw Icon" shall mean and refer to Opposer's mark.

"Opposer's Marks" shall mean and refer to Opposer's marks identified in its Notice of Opposition in this proceeding, including the Claw Icon mark.

- 10. The term "communication(s)" includes the disclosure, transfer or exchange of information by any means written, verbal, electronic or otherwise.
- 11. The phrase "Notice of Opposition" shall refer to the Notice of Opposition filed by Opposer in this proceeding with the TTAB on July 3, 2012.
- 12. The phrase "Applicant's Goods" shall mean the goods identified in U.S. Trademark Application Serial Number 85/508374, namely: "Baseball caps and hats; Golf caps; Hats; Hooded sweat shirts; Knitted caps; Sports caps and hats; Sweaters; T-shirts; Wearable garments and clothing, namely, shirts" in Class 25.
- 13. The phrase "Applicant's Application" shall mean U.S. Trademark Application Serial Number 85/508374.

GENERAL INSTRUCTIONS

- 1. In multi-part Interrogatories, the separate parts of such Interrogatories are to be read in context of the entire Interrogatory, but each part is to be answered separately.
- 2. All requests contained in the following Interrogatories to identify a person are to be answered by providing sufficient information to enable the undersigned to contact the person by telephone, mail, and to serve legal documents on such person. If such a person is a natural person, state his or her:
 - a) full name;
 - b) current business and residence addresses, including telephone numbers;
 - c) present employer, occupation and position;
 - d) a brief description of the job responsibilities of such person; and
- e) a brief description of the responsibilities of such person with the pertinent organization.

If such a person is other than a natural person, state:

- a) the full name or designation of the entity;
- b) the legal classification of the entity (e.g., corporation, partnership, etc.), giving the state of incorporation where appropriate;

- c) the principal place of business;
- d) the current or last known address and telephone number of the entity; and
- e) any other information reasonably necessary to permit efficient contact with the
- 3. If you claim that any information requested is privileged, please provide all information falling within the scope of the Interrogatory which is not privileged, and identify with sufficient particularity for purposes of a Motion to Compel a Response or Production of each item of information, document or thing, separately, with respect to which you claim a privilege, and state:
 - a) the basis on which the privilege is claimed;
 - b) the author of the document;
- c) each individual or other person to whom the document, or copy thereof, was sent or otherwise disclosed; and
 - d) the date of the document.

You are not requested to provide privileged information or information for which you claim privileged, but only to identify such information, document or thing.

4. Applicant's responses to the following Interrogatories are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

INTERROGATORIES

INTERROGATORY NO. 29:

Describe in detail how and in what way any of Opposer's Marks were considered or referenced during the selection, development, or design of Applicant's Mark.

INTERROGATORY NO. 30:

Identify all third-party product names, service names, or marks of which you are aware that consist of a stylized letter "M."

KNOBBE, MARTENS, OLSON & BEAR, LLP

	4-8-2013	By: Bright (1)	1
Dated:	10-2013	By: / Jugue Of	Z
		Steven J. Nataupsky	/

Steven J. Nataupsky
Lynda J. Zadra-Symes
Brigette B. Chaput
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
(949) 760-0404
Attorneys for Opposer,
Monster Energy Company

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing <u>OPPOSER'S SECOND SET OF</u> <u>INTERROGATORIES NOS. 29-30</u> upon Applicant's counsel by e-mail to ebrown1@suffolk.edu and delivery by hand, on April 9, 2013, addressed as follows:

EVE BROWN
SUFFOLK UNIVERSITY LAW SCHOOL
120 TREMONT ST STE 190-J
BOSTON, MA 02108-4977
UNITED STATES

Francisca C. Leon Guerrero

15180502/FLG/040813

EXHIBIT 2

HANBEV.1346M TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

1	
MONSTER ENERGY COMPANY,	Opposition No.: 91205924
Opposer,	Serial No.: 85/508374
v.) CHIH, LI-WEI,) Applicant.	Mark:
Applicant.)))

OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 1-60

Pursuant to the Rules of Practice of the United States Trademark Trial and Appeal Board and the applicable Federal Rules of Civil Procedure, Opposer MONSTER ENERGY COMPANY hereby requests that Applicant Li-Wei Chih within thirty (30) days of service hereof, produce the following documents and things for inspection and copying at the offices of Knobbe, Martens, Olson & Bear LLP, 2040 Main Street, Fourteenth Floor, Irvine, California 92614, or such other place as may be agreed between the parties, in accordance with Rule 2.210(a) of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure. Alternatively, Applicant may fulfill his obligation to produce the requested documents by attaching complete and legible copies of the original documents to his written responses to these document requests prior to the service of the same upon Opposer. Opposer may request that Applicant supplement his responses from time to time as appropriate in accordance with Fed. R. Civ. P. Rule 26(e).

DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

- 1. The terms "Applicant" or "You" shall mean Li-Wei Chih, and any company or entity in which Li-Wei Chih is a manager, director, officer, or owner, and any present or former principal, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any parent, subsidiary, division, predecessor, successor, affiliate or licensee.
- 2. The term "Opposer" shall mean Monster Energy Company, and any present or former principal, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any parent, subsidiary, division, predecessor, successor, affiliate or licensee.
- 3. The term "person" shall include both natural persons and corporate or other business entities whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents, and attorneys.
- 4. The term "document" shall mean any tangible thing upon which information is or has been stored, recorded, or communicated, and any written, printed, typed, and visually or aurally reproduced material of any kind, whether or not privileged, including, but not limited to, letters, notes, memoranda, e-mail, invoices, purchase orders, records, minutes, bills, contracts, agreements, orders, receipts, drawings or sketches, photographs, tapes or disks capable of being mechanically read, advertising or promotional literature, operating manuals or instructions, bulletins, cables or telegrams, tapes or other recordings, test data, electronically stored media, HTML code, website pages and report, and all other media encompassed by Federal Rule of Civil Procedure 34(a).
- 5. The term "thing" shall mean all tangible objects of any type, composition, construction or nature.
- 6. The terms "and" and "or" shall be construed both conjunctively and disjunctively and the plural shall be construed as the singular, and vice versa, as necessary and in order to

bring within the scope of these Interrogatories any information, documents, or things that might otherwise be construed to be outside their scope.

- 7. The term "trademark" or "mark" includes trademarks, service marks, collective marks, certification marks and trade-names as defined in 15-U.S.C. § 1127.
- 8. "Applicant's Mark" shall mean and refer to the mark that is the subject of U.S. Trademark Application Serial No. 85/508374
 - 9. The term "Claw Icon" shall mean and refer to Opposer's mark.
- 10. "Opposer's Marks" shall mean and refer to Opposer's marks identified in its Notice of Opposition in this proceeding, including the Claw Icon mark.
- 11. The term "communication(s)" includes the disclosure, transfer or exchange of information by any means written, verbal, electronic or otherwise.
- 12. The phrase "Notice of Opposition" shall refer to the Notice of Opposition filed by Opposer in this proceeding with the TTAB on July 3, 2012.
- 13. The phrase "Applicant's Goods" shall mean the goods identified in U.S. Trademark Application Serial Number 85/508374, namely: "Baseball caps and hats; Golf caps; Hats; Hooded sweat shirts; Knitted caps; Sports caps and hats; Sweaters; T-shirts; Wearable garments and clothing, namely, shirts" in Class 25.
- 14. The phrase "Applicant's Application" shall mean U.S. Trademark Application Serial Number 85/508374.

GENERAL INSTRUCTIONS

- 1. If you claim that any information requested herein is privileged, please provide all information falling within the scope of the Request which is not privileged, and identify with sufficient particularity (for purposes of a motion to compel a response or to compel production) each document, separately, with respect to which you claim a privilege, and state:
 - (a) the basis on which the privilege is claimed;
 - (b) the name and title of the author of the document;

- (c) the name and title of each individual or other person to whom the document or copy thereof was transmitted or otherwise disclosed;
- (d) the date, place, and manner of recording or other preparation of the document; and
- (e) if the privilege being asserted is in connection with a claim or defense governed by state law, the state's privilege rule being invoked.
- 2. Applicant is not requested to provide privileged information or information for which you claim privilege, but only to identify such information, document, or thing.
- 3. Applicant's responses to the following requests are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.
- 4. If any document which Applicant would have produced in response to any request for production was, but is no longer, in your present possession or subject to Applicant's control or is no longer in existence, please state whether any such document is:
 - a. missing or lost;
 - b. destroyed;
 - c. transferred to others; and/or
- d. otherwise disposed of and, in any such instance, set forth the surrounding circumstances in any authorization for such disposition and state the approximate date of any such disposition, and, if known, state also the present location and custodian of such document.
- 5. Any documents or things responsive to the following Requests shall be produced in the order and in the manner that they were or are kept in the ordinary course of business and shall be reproduced in their original file folders, binders, or other covers or containers, if possible. Documents or things which must be removed from their original folders, binders, or other covers or containers to be produced shall be identified in a manner clearly specifying where such documents originated.

- 6. If Applicant claims that a Request is overly broad, unduly burdensome, irrelevant, or otherwise objectionable, you are to provide documents responsive to that portion of the Request that is not objectionable and are to identify specifically the respect in which the Request is allegedly objectionable.
- 7. Applicant's obligation to respond to these requests is continuing and the responses to the following requests are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All documents and things referring or relating to the selection or adoption of Applicant's Mark, including, but not limited to, how Applicant created, conceived, selected, cleared and acquired Applicant's Mark, whether in the United States or abroad.

REQUEST FOR PRODUCTION NO. 2:

All documents and things referring or relating to any trademark search or research conducted by or on behalf of Applicant directed to Applicant's Mark.

REQUEST FOR PRODUCTION NO. 3:

All documents and things referring or relating to any inquiry or investigation made by or on behalf of Applicant with respect to any trademark revealed in any such trademark search or research directed to Applicant's Mark.

REQUEST FOR PRODUCTION NO. 4:

All documents and things referring or relating to any research, inquiry or investigation made by or on behalf of Applicant with respect to Applicant's Mark.

REQUEST FOR PRODUCTION NO. 5:

All documents and things referring or relating to any opinion regarding Applicant's right to use Applicant's Mark in connection with any good or service.

REQUEST FOR PRODUCTION NO. 6:

All documents and things referring or relating to Applicant's application for registration of Applicant's mark.

REQUEST FOR PRODUCTION NO. 7:

All documents and things referring or relating to market surveys or other research directed to Applicant's Mark.

REQUEST FOR PRODUCTION NO. 8:

All documents and things referring or relating to any and all goods that have been licensed, distributed and/or sold by Applicant or any other person or entity authorized by Applicant bearing or in connection with Applicant's Mark.

REQUEST FOR PRODUCTION NO. 9:

All documents and things referring or relating to the goods or services in connection with which Opposer currently uses or licenses, or has used or licensed, the Asserted Mark.

REQUEST FOR PRODUCTION NO. 10:

Samples of each product, label, tag, packaging, container, sign, brochures, advertisement, or catalog showing Applicant's past use, current use and/or intended use of Applicant's Mark.

REQUEST FOR PRODUCTION NO. 11:

All documents and things referring or relating to the directions and/or instructions for use regarding the use and/or disposal of Applicant's products or services that are, or are intended to be affixed, marketed, distributed and/or sold in connection with Applicant's Mark.

REQUEST FOR PRODUCTION NO. 12:

All documents and things referring or relating to Applicant's use or planned use of Applicant's Mark in U.S. commerce in connection with the goods and services identified in the application for Applicant's Mark during each year from the date of first use or conception to the present.

REQUEST FOR PRODUCTION NO. 13:

All documents and things referring or relating to Applicant's first use or intended use of

Applicant's Mark in connection with any and all goods and/or services.

REQUEST FOR PRODUCTION NO. 14:

All documents and things referring or relating to the types of consumers to whom Applicant advertises and markets or to whom Applicant plans to advertise and market any goods and/or services sold in connection with Applicant's Mark.

REQUEST FOR PRODUCTION NO. 15:

All documents and things referring or relating to trade shows where Applicant has displayed any goods under Applicant's mark.

REQUEST FOR PRODUCTION NO. 16:

All documents and things referring or relating to all channels of trade through which Applicant is offering or advertising or through which Applicant intends to offer or advertise goods and/or services under Applicant's Mark.

REQUEST FOR PRODUCTION NO. 17:

All documents and things referring or relating to Applicant's channels of trade, including, but not limited to, the names and locations of wholesale and/or retail suppliers through which each good and/or service has been or is intended to be provided in connection with Applicant's Mark.

REQUEST FOR PRODUCTION NO. 18:

All documents and things referring or relating to any expansion of the channels of trade and/or to alter or expand, or plans to alter or expand, the goods and/or services in connection with which Applicant's Mark is used or will be used.

REQUEST FOR PRODUCTION NO. 19:

All documents and things referring or relating to trade or industry shows attended or planned to be attended by Applicant.

REQUEST FOR PRODUCTION NO. 20:

All documents and things referring or relating to the advertising and promotion of Applicant's Mark or of the goods and/or services sold in connection with Applicant's Mark,

including, but not limited to, media in which Applicant's Mark appears, labels, boxes, packaging, instructions for use, directions for use, stickers, advertisements, brochures, flyers, pamphlets, promotional materials, magazines, articles, billboards, radio advertisements, television advertisements, Internet advertisements, or other printed or electronic publications, website or domain names.

REQUEST FOR PRODUCTION NO. 21:

All documents and things referring or relating to any and all advertising agencies, public relations agencies, marketing firms, market research agencies, or other person(s) which Applicant has used, participated with, or cooperated with in advertising, marketing or promoting any goods and/or services offered in connection with Applicant's Mark.

REQUEST FOR PRODUCTION NO. 22:

All drawings of specimens of any logos which use or incorporate Applicant's Mark, whether in draft or final form.

REQUEST FOR PRODUCTION NO. 23:

All press releases issued by or on behalf of Applicant that refer to Applicant's Mark.

REQUEST FOR PRODUCTION NO. 24:

All documents and things reflecting any mention in the press of Applicant's Mark.

REQUEST FOR PRODUCTION NO. 25:

All documents and things referring or relating to any and all print publications in which in which You have advertised or You plan or intend to advertise any goods bearing or using Applicant's Mark.

REQUEST FOR PRODUCTION NO. 26:

All documents and things referring or relating to any magazine, newspaper or other printed publication that contain an article or other story relating to goods and/or services sold or offered under Applicant's Mark.

REQUEST FOR PRODUCTION NO. 27:

All documents and things referring or relating to Applicant's advertising and promotional

budget for Applicant's Mark from the first use of Applicant's Mark to the present.

REQUEST FOR PRODUCTION NO. 28:

All documents and things referring or relating to any agreements referring or relating to Applicant's Mark or any variation thereof.

REQUEST FOR PRODUCTION NO. 29:

All documents and things referring or relating to any agreements referring or relating to any goods or services offered under Applicant's Mark.

REQUEST FOR PRODUCTION NO. 30:

All documents and things referring or relating to Applicant's total sales of each product sold under Applicant's Mark for each year since the date of first use.

REQUEST FOR PRODUCTION NO. 31:

All documents and things referring or relating to any grant or acquisition of rights in Applicant's Mark through assignment, license, or other transfer of any rights to or from Applicant.

REQUEST FOR PRODUCTION NO. 32:

All documents and things referring or relating to any claimed predecessor in title to Applicant's Mark.

REQUEST FOR PRODUCTION NO. 33:

All documents and things referring or relating to any objection raised to Applicant's use or registration of Applicant's Mark by any person or entity.

REQUEST FOR PRODUCTION NO. 34:

All documents and things referring or relating to all federal or state trademark registrations, applications, or common law marks owned or used by Applicant, or any third party, upon which Applicant may rely for any purpose in this opposition proceeding.

REQUEST FOR PRODUCTION NO. 35:

All documents and things referring or relating to any lawsuits, proceedings, or other formal legal proceedings to which Applicant was a party that were based on, concerned, or

involved Applicant's Mark.

REQUEST FOR PRODUCTION NO. 36:

All documents and things referring or relating to any settlement, coexistence and/or consent agreements which Applicant was or is a party are based upon, concern or involve Applicant's Mark.

REQUEST FOR PRODUCTION NO. 37:

All documents and things referring or relating to any effort by Applicant to enforce Applicant's Mark, including, but not limited to, any cease and desist letters sent by Applicant relating to Applicant's Mark.

REQUEST FOR PRODUCTION NO. 38:

All documents and things referring or relating to transactions or communications between Applicant and any of Applicant's current or former agents or employees that relate to Applicant's Mark.

REQUEST FOR PRODUCTION NO. 39:

All communications between Applicant and any third party relating to Applicant's Mark.

REQUEST FOR PRODUCTION NO. 40:

All documents and things referring or relating to the pricing for the goods and/or services offered under Applicant's Mark.

REQUEST FOR PRODUCTION NO. 41:

All documents and things referring or relating to Applicant's total sales (in units and dollars) of each product or service sold under Applicant's Mark on a monthly basis from the date of first sale to the present.

REQUEST FOR PRODUCTION NO. 42:

All documents and things upon with Applicant may rely upon in this opposition proceeding.

REQUEST FOR PRODUCTION NO. 43:

All documents and things referring or relating to any contacts Applicant has had with

experts in connection with this opposition proceeding.

REQUEST FOR PRODUCTION NO. 44:

All documents and things exchanged between Applicant and any expert in this opposition proceeding.

REQUEST FOR PRODUCTION NO. 45:

For each expert whose opinion Applicant may rely upon in this opposition proceeding, all documents referring or relating to any of the following:

- a) any opinions that may be presented;
- b) the reason for such opinions;
- c) any data or information considered by the witness in forming the opinions;
- d) any exhibits used in support of or summarizing the opinions;
- e) the compensation being paid to the witness; and
- f) any cases in which the witness has testified at trial or by deposition.

REQUEST FOR PRODUCTION NO. 46:

All documents and things referring or relating to Applicant's selection and use of the



REQUEST FOR PRODUCTION NO. 47:

All documents and things referring or relating to Applicant's selection and use of the wording "UNLEASH YOUR INNER MONSTER", including the first use of that wording.

REQUEST FOR PRODUCTION NO. 48:

All documents and things referring or relating to Opposer, Opposer's Marks, or Opposer's products.

REQUEST FOR PRODUCTION NO. 49:

All communications referring or relating to Opposer's Marks, or Opposer's products.

REQUEST FOR PRODUCTION NO. 50:

All documents and things referring or relating to Applicant's first awareness of Opposer, Opposer's Marks, or Opposer's products.

REQUEST FOR PRODUCTION NO. 51:

All documents and things referring or relating to any comments or inquiries from customers or potential customers that Applicant has received relating to Opposer, Opposer's Marks, or Opposer's products.

REQUEST FOR PRODUCTION NO. 52:

All documents and things referring or relating to any confusion on the part of any person or entity as to the source, sponsorship, or affiliation of Applicant's goods or services offered under Applicant's Mark on the one hand, and Opposer's goods or services offered under Opposer's Marks on the other hand.

REQUEST FOR PRODUCTION NO. 53:

All documents and things referring or relating to transactions or communications between Opposer and Applicant.

REQUEST FOR PRODUCTION NO. 54:

All documents and things referring or relating to Applicant's policies regarding retention, storage, filing and destruction of documents and things.

REQUEST FOR PRODUCTION NO. 55:

All documents and things used or referred to in connection with the preparation of Applicant's responses to the Interrogatories served by Opposer in this opposition proceeding.

REQUEST FOR PRODUCTION NO. 56:

All documents and things identified in Your Initial Disclosures.

REQUEST FOR PRODUCTION NO. 57:

All documents and things used or referred to in connection with the preparation of Applicant's responses to the Requests for Admission served by Opposer in this opposition proceeding.

REQUEST FOR PRODUCTION NO. 58:

All documents and things referring or relating to the First Affirmative Defense contained in Your Answer to Opposer's Notice of Opposition.

REQUEST FOR PRODUCTION NO. 59:

All documents and things referring or relating to the Second Affirmative Defense contained in Your Answer to Opposer's Notice of Opposition.

REQUEST FOR PRODUCTION NO. 60:

All documents and things referring or relating to the Third Affirmative Defense contained in Your Answer to Opposer's Notice of Opposition.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 8, 2063

Steven J. Nataupsky

Lynda J. Zadra-Symes

Brigette B. Chaput

2040 Main Street

Fourteenth Floor

Irvine, CA 92614

(949) 760-0404

Attorneys for Opposer,

Monster Energy Company

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing <u>OPPOSER'S FIRST SET OF</u> <u>REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 1-60</u> upon Applicant's counsel by e-mail to ebrown1@suffolk.edu and delivery by hand, on March 11, 2013, addressed as follows:

EVE BROWN SUFFOLK UNIVERSITY LAW SCHOOL 120 TREMONT ST STE 190-J BOSTON, MA 02108-4977 UNITED STATES

Sabrina Jacob

14810210 020713 HANBEV.1346M TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

7	
MONSTER ENERGY COMPANY,	Opposition No.: 91205924
Opposer,	Serial No.: 85/508374
v. CHIH, LI-WEI, Applicant.	Mark:
5))

OPPOSER'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 61-70

Pursuant to the Rules of Practice of the United States Trademark Trial and Appeal Board and the applicable Federal Rules of Civil Procedure, Opposer MONSTER ENERGY COMPANY hereby requests that Applicant Li-Wei Chih within thirty (30) days of service hereof, produce the following documents and things for inspection and copying at the offices of Knobbe, Martens, Olson & Bear LLP, 2040 Main Street, Fourteenth Floor, Irvine, California 92614, or such other place as may be agreed between the parties, in accordance with Rule 2.210(a) of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure. Alternatively, Applicant may fulfill his obligation to produce the requested documents by attaching complete and legible copies of the original documents to his written responses to these document requests prior to the service of the same upon Opposer. Opposer may request that Applicant supplement his responses from time to time as appropriate in accordance with Fed. R. Civ. P. Rule 26(e).

DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

- 1. The terms "Applicant" or "You" shall mean Li-Wei Chih, and any company or entity in which Li-Wei Chih is a manager, director, officer, or owner, and any present or former principal, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any parent, subsidiary, division, predecessor, successor, affiliate or licensee.
- 2. The term "Opposer" shall mean Monster Energy Company, and any present or former principal, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any parent, subsidiary, division, predecessor, successor, affiliate or licensee.
- 3. The term "person" shall include both natural persons and corporate or other business entities whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents, and attorneys.
- 4. The term "document" shall mean any tangible thing upon which information is or has been stored, recorded, or communicated, and any written, printed, typed, and visually or aurally reproduced material of any kind, whether or not privileged, including, but not limited to, letters, notes, memoranda, e-mail, invoices, purchase orders, records, minutes, bills, contracts, agreements, orders, receipts, drawings or sketches, photographs, tapes or disks capable of being mechanically read, advertising or promotional literature, operating manuals or instructions, bulletins, cables or telegrams, tapes or other recordings, test data, electronically stored media, HTML code, website pages and report, and all other media encompassed by Federal Rule of Civil Procedure 34(a).
- 5. The term "thing" shall mean all tangible objects of any type, composition, construction or nature.
- 6. The terms "and" and "or" shall be construed both conjunctively and disjunctively and the plural shall be construed as the singular, and vice versa, as necessary and in order to

bring within the scope of these Interrogatories any information, documents, or things that might otherwise be construed to be outside their scope.

- 7. The term "trademark" or "mark" includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.
- 8. "Applicant's Mark" shall mean and refer to the mark that is the subject of U.S. Trademark Application Serial No. 85/508374
 - 9. The term "Claw Icon" shall mean and refer to Opposer's mark.
- 10. "Opposer's Marks" shall mean and refer to Opposer's marks identified in its Notice of Opposition in this proceeding, including the Claw Icon mark.
- 11. The term "communication(s)" includes the disclosure, transfer or exchange of information by any means written, verbal, electronic or otherwise.
- 12. The phrase "Notice of Opposition" shall refer to the Notice of Opposition filed by Opposer in this proceeding with the TTAB on July 3, 2012.
- 13. The phrase "Applicant's Goods" shall mean the goods identified in U.S. Trademark Application Serial Number 85/508374, namely: "Baseball caps and hats; Golf caps; Hats; Hooded sweat shirts; Knitted caps; Sports caps and hats; Sweaters; T-shirts; Wearable garments and clothing, namely, shirts" in Class 25.
- 14. The phrase "Applicant's Application" shall mean U.S. Trademark Application Serial Number 85/508374.

GENERAL INSTRUCTIONS

- 1. If you claim that any information requested herein is privileged, please provide all information falling within the scope of the Request which is not privileged, and identify with sufficient particularity (for purposes of a motion to compel a response or to compel production) each document, separately, with respect to which you claim a privilege, and state:
 - (a) the basis on which the privilege is claimed;
 - (b) the name and title of the author of the document;

- (c) the name and title of each individual or other person to whom the document or copy thereof was transmitted or otherwise disclosed;
- (d) the date, place, and manner of recording or other preparation of the document; and
- (e) if the privilege being asserted is in connection with a claim or defense governed by state law, the state's privilege rule being invoked.
- 2. Applicant is not requested to provide privileged information or information for which you claim privilege, but only to identify such information, document, or thing.
- 3. Applicant's responses to the following requests are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.
- 4. If any document which Applicant would have produced in response to any request for production was, but is no longer, in your present possession or subject to Applicant's control or is no longer in existence, please state whether any such document is:
 - a. missing or lost;
 - b. destroyed;
 - c. transferred to others; and/or
- d. otherwise disposed of and, in any such instance, set forth the surrounding circumstances in any authorization for such disposition and state the approximate date of any such disposition, and, if known, state also the present location and custodian of such document.
- 5. Any documents or things responsive to the following Requests shall be produced in the order and in the manner that they were or are kept in the ordinary course of business and shall be reproduced in their original file folders, binders, or other covers or containers, if possible. Documents or things which must be removed from their original folders, binders, or other covers or containers to be produced shall be identified in a manner clearly specifying where such documents originated.

- 6. If Applicant claims that a Request is overly broad, unduly burdensome, irrelevant, or otherwise objectionable, you are to provide documents responsive to that portion of the Request that is not objectionable and are to identify specifically the respect in which the Request is allegedly objectionable.
- 7. Applicant's obligation to respond to these requests is continuing and the responses to the following requests are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 61:

All documents and things regarding any litigation involving or related to Applicant's Mark.

REQUEST FOR PRODUCTION NO. 62:

All documents and things referring or relating to any objections made by Applicant to the use by another of a mark or marks believed by Applicant to be confusingly similar to Applicant's Mark, or any variation thereof.

REQUEST FOR PRODUCTION NO. 63:

All documents and things referring or relating to the specific geographic areas within which Applicant has provided goods and/or services in the United States under Applicant's Mark.

REQUEST FOR PRODUCTION NO. 64:

All documents and things referring or relating to any plans by Applicant to expand use of Applicant's Mark, or any variation thereof, or sales or distribution of the goods and/or services, including, but not limited to, expansion of marketing lines, channels of distribution, the number of products or services in connection with which Applicant's Mark are used, the customer base or geographical areas served.

REQUEST FOR PRODUCTION NO. 65:

All business plans reflecting Applicant's use or intent to use Applicant's Mark.

REQUEST FOR PRODUCTION NO. 66:

All documents and things referring or relating to the amount expended annually by Applicant and/or Applicant's licensees in advertising Applicant's Mark in the United States.

REQUEST FOR PRODUCTION NO. 67:

All documents and things referring or relating to Applicant's advertising and promotional budget for Applicant's Mark from the first use of Applicant's Mark to the present.

REQUEST FOR PRODUCTION NO. 68:

Price lists of each product and/or service sold in connection with Applicant's Mark.

REQUEST FOR PRODUCTION NO. 69:

Documents sufficient to identify all goods and/or services that Applicant provides or intends to provide under Applicant's Marks in the United States.

REQUEST FOR PRODUCTION NO. 70:

All documents and things relating to any third-party marks that include a stylized letter "M."

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 4-8-2013

Steven. Nataupsky
Lynda J. Zadra-Symes
Brigette B. Chaput
2040 Main Street
Fourteenth Floor
Irvine, CA 92614
(949) 760-0404
Attorneys for Opposer,
Monster Energy Company

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing <u>OPPOSER'S SECOND SET OF</u> <u>REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 61-70</u> upon Applicant's counsel by e-mail to ebrown1@suffolk.edu and delivery by hand, on April 9, 2013, addressed as follows:

EVE BROWN SUFFOLK UNIVERSITY LAW SCHOOL 120 TREMONT ST STE 190-J BOSTON, MA 02108-4977

Francisca C. Leon Guerrero

15180764/FLG/040813

EXHIBIT 3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MONSTER ENERGY COMPANY, Opposer)	
v.	ý	Opposition No: 91205924
	Ĵ	Serial No.: 85/508374
)	Mark: M
CHIH, LI-WEI, Applicant.)	
7		

APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES NOS. 1-28

Pursuant to the Rules of Practice of the United States Trademark Trial and Appeal Board and the applicable Federal Rules of Civil Procedure, Applicant Li-Wei Chih hereby responds to Opposer Monster Energy Company's First Set of Interrogatories, in writing and under oath.

DEFINITIONS

- 1. The term "Applicant" as used herein denotes Li-Wei Chih.
- 2. The term "Opposer" as used herein denotes Monster Energy Company, its subsidiaries and divisions, its predecessors and successors, and officers, directors, employees, agents, and representatives thereof.
- 3. The term "Notice of Opposition" as used herein denotes Opposer's Notice of Opposition, filed with the United States Patent and Trademark Office, in opposition of Applicant's application for registration of the "M" Mark.

- 4. The term "Applicant's Mark" as used herein denotes the "M" Mark, serial No. 85/508,374, as before the United States Patent and Trademark Office for registration.
- 5. The term "Monsterfish" or "monsterfish" as used herein denotes large, rare and exotic fish of all species.

GENERAL OBJECTIONS

The following general objections are incorporated by reference in response to each and every Interrogatory set forth below and are not waived with respect to any response. The following responses are based upon information and writings presently available to Applicant.

- A. Applicant objects to the Opposer's "Definitions" to the extent they exceed the requirements of, or purport to create obligations greater than those imposed by the FRCP and the TBMP.
- B. Applicant objects to the Interrogatories to the extent that they call for production of information, documents, or things protected from disclosure by the attorney-client privilege, the work-product doctrine, and any other applicable privilege, immunity or other limitation on discovery. Applicant hereby asserts this general objection with respect to each Interrogatory to the extent the Interrogatory is broadly interpreted to encompass privileged information, documents or things. Moreover, should any such response by Applicant occur, it was inadvertent and shall not constitute a waiver of privilege or of Applicant's right to object during this Opposition or otherwise to the use of any such information, documents, or things.
 - C. Applicant objects to the Interrogatories to the extent that they seek information,

documents or things that are not relevant to this Opposition, or are not reasonably calculated to lead to the discovery of admissible evidence.

D. Applicant objects to the Interrogatories to the extent that they seek information, documents or things not in Applicant's possession, custody, or control.

E. Applicant objects to the Interrogatories to the extent that they are overbroad, unduly burdensome, or fail to describe the information, documents, or things sought with a reasonable degree of specificity.

F. Applicant objects to the Interrogatories to the extent that they seek private, privileged and confidential commercial, financial, trade secret and/or proprietary business information.

G. Applicant objects to the Interrogatories to the extent that they contain discrete subparts contrary to FCRP Rule 33(a).

H. As discovery is ongoing, and Applicant's investigation is continuing, Applicant reserves its right to supplement its responses herein and its production with any responsible, non-privileged information, documents or things that may be subsequently discovered.

INTERROGATORIES

INTERROGATORY NO. 1

Identify all persons with knowledge about how Applicant's Mark was created, conceived, selected, cleared, adopted, or acquired and the substance of each person's knowledge.

RESPONSE AND/OR OBJECTION NO. 1

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the grounds that it is vague and ambiguous, with respect to "created," "conceived," "selected," "cleared," "adopted," and "acquired." Applicant objects further on the ground that it contains discrete subparts contrary to FCRP Rule 33(a), that it comprises more than one interrogatory. Applicant further objects on the ground that it calls for information or documents or things protected by attorney-client privilege, by the work-product doctrine, or by other applicable privilege, immunity, or other limitation on discovery. Applicant further objects to this Interrogatory on the ground that it is premature.

Subject to and without waiver of objections, Applicant responds as follows: Li-Wei Chen, (Applicant).

INTERROGATORY NO. 2

Identify the person(s) with the most comprehensive knowledge of Your past, present, and planned use of Applicant's Mark in the U.S., including the first use of that mark.

RESPONSE AND/OR OBJECTION NO. 2

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of objections, Applicant responds as follows: Li-Wei Chen, (Applicant).

INTERROGATORY NO. 3

Describe in detail the circumstances surrounding Applicant's selection of Applicant's Mark, including describing why and how Applicant's Mark was selected and identifying the dates Applicant's Mark was selected.

RESPONSE AND/OR OBJECTION NO. 3

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the grounds that it is vague and ambiguous with respect to "circumstances." Applicant further objects on the ground that it contains discrete subparts contrary to FCRP Rule 33(a), and that it comprises more than one interrogatory.

Subject to and without waiver of objections, Applicant was keeping Monsterfish in 2004 and based the idea for his word mark off of a Japanese pictorial book titled "Monsterfishkeepers." Moreover, the idea for the "M" mark spawned from the notion that Monsterfish are devilish fish, since the devil had horns and a tail, it seemed logical to Applicant to incorporate both into the "M" mark.

INTERROGATORY NO. 4

Identify all alternative marks that were considered, but ultimately rejected, by Applicant prior to the adoption of Applicant's Mark.

RESPONSE AND/OR OBJECTION NO. 4

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it is irrelevant.

Subject to and without waiver of objections, Applicant decided between his current "M" mark and a skeleton of a dead fish bearing many teeth. Ultimately Applicant decided on his current "M" mark.

INTERROGATORY NO. 5

Describe each search or investigation conducted by or on behalf of You in connection with Applicant's Mark or any variation thereof, including, but not limited to, any search of the records of the United States Patent and Trademark Office or of any other records or publications.

RESPONSE AND/OR OBJECTION NO. 5

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it is subject to the attorney-client privilege. Applicant further objects to this Interrogatory on the grounds that it is subject to the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant used an attorney for search and registration of Applicant's "M" mark.

INTERROGATORY NO. 6

Describe the process by which You selected and adopted Applicant's Mark including, but not limited to, the steps You took to determine You could use and register the mark, the reasons for why You selected or adopted that mark, how the mark was first used in commerce including the goods and services, and the dates of first use for each good or service.

RESPONSE AND/OR OBJECTION NO. 6:

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague and ambiguous with respect to "reasons"8. Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant relied on an attorney in determining he could use and register the mark. The mark was first used in commerce in May 2005 on Applicant's online monster fish forum.

INTERROGATORY NO. 7

For each product listed in Applicant's Application, describe the circumstances surrounding the first sale of that product, including, but not limited to, the date when You first sold that product, the person or entity that you contend sold the product, the person or entity that you contend purchased the product, the retail prices charged for the product, and the person(s) most knowledgeable about those sales.

RESPONSE AND/OR OBJECTION NO. 7

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague and ambiguous. Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant began selling t-shirts bearing the "M" mark in 2010 via Applicant's online monsterfish forum. The price a t-shirt was fifteen dollars, (\$15), including shipping and handling. Applicant is most knowledgeable about the initial sale of the t-shirt.

INTERROGATORY NO. 8

For any uses of the mark not identified in response to Interrogatory No.7, identify the dates of that use and describe that use including, but not limited to, describing the

circumstances surrounding the first use of the marks in that manner by You, and identifying all documents evidencing the first use of the marks in that manner and all persons knowledgeable about that use.

RESPONSE AND/OR OBJECTION NO. 8

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague and ambiguous. Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant responds as follows: see Response to Interrogatory No. 7.

INTERROGATORY NO. 9

Describe each way Applicant's Mark is or will be used in connection with each good and/or service identified in response to Interrogatory Nos. 7 and 8, including but not limited to the size, placement, and coloring of the mark.

RESPONSE AND/OR OBJECTION NO. 9

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague and ambiguous with respect to "each way." Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant responds as follows: The "M" mark is used on t-shirts, decals and key chains. Approximately 99% of the aforementioned goods bear the "M" mark in white and/or black ink on a red, pink, or black t-shirt, decal or key chain.

INTERROGATORY NO. 10

Describe in detail the actual or intended demographics of the purchasers for the goods and/or services sold or offered in connection with Applicant's Mark.

RESPONSE AND/OR OBJECTION NO. 10

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague

and ambiguous. Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant responds as follows: The actual and intended demographics of the purchasers for the goods and/or services sold or offered in connection with Applicant's Mark are monsterfish hobbyists and enthusiasts worldwide.

INTERROGATORY NO. 11

Describe in detail the trade channels, including, but not limited to, wholesale and retail channels, through which Applicant provides to consumers and/or plans to provide to consumers the goods and/or services sold or offered in connection with Applicant's Mark.

RESPONSE AND/OR OBJECTION NO. 11

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague and ambiguous. Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant responds as follows: Applicant sells goods/services bearing Applicant's Mark through Applicant's online monsterfish forum.

Furthermore, Applicant disburses t-shirts to monsterfish enthusiasts free of charge at various fish expositions and other monsterfish events.

INTERROGATORY NO. 12

Identify each geographic area in which Applicant has provided and/or plans to provide goods and/or services in connection with Applicant's Mark.

RESPONSE AND/OR OBJECTION NO. 12

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague and ambiguous. Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant responds as follows: Applicant has provided and/or plans to provide goods and/or services in connection with Applicant's Mark via his online monsterfish forum and at fish expositions throughout the United States.

INTERROGATORY NO. 13

Identify all past or present customers (including, for example, retail, Internet, mail order, and/or wholesale) of the goods and/or services sold or offered in connection with Applicant's Mark.

RESPONSE AND/OR OBJECTION NO. 13

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague and ambiguous. Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant responds as follows: All past or present customers of the goods and/or services sold or offered in connection with Applicant's mark purchase Applicant's goods/services through Applicant's online monsterfish forum.

INTERROGATORY NO. 14

Separately for each good and/or service sold or offered in connection with Applicant's Mark, state the total sales (in units and dollars) on a monthly basis from the date of first sale to the present.

RESPONSE AND/OR OBJECTION NO. 14

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague and ambiguous. Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

INTERROGATORY NO. 15

For each product or service sold or offered in connection with Applicant's Mark, state the average wholesale and retail price or intended average wholesale and retail price.

RESPONSE AND/OR OBJECTION NO. 15

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague and ambiguous. Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

INTERROGATORY NO. 16

Describe in detail all manners in which the goods and/or services sold or offered in connection with Applicant's Mark have been advertised or promoted and/or plan to be advertised or promoted.

RESPONSE AND/OR OBJECTION NO. 16

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague and ambiguous. Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant responds as follows: Applicant advertises goods and/or services in connection with Applicant's Mark in various fish-trade magazines, at monsterfish trade shows, online through Applicant's monsterfish forum and through various fish-related websites.

INTERROGATORY NO. 17

Identify the amount Applicant has spent on advertising or promoting Applicant's Mark from the date of first use or conception to the present.

RESPONSE AND/OR OBJECTION NO. 17

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague and ambiguous with respect to "amount" and "advertising or promoting." Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant responds as follows: Applicant has spent approximately one hundred thousand dollars, (\$100,000), or more on advertising and promotion of Applicant's Mark since 2005 to the present.

INTERROGATORY NO. 18

Describe in detail the circumstances surrounding Applicant's awareness of Opposer's Marks, including how and when Applicant first became aware of Opposer's Marks.

RESPONSE AND/OR OBJECTION NO. 18

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than

one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague and ambiguous. Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant responds as follows: Applicant encountered Opposer's Mark, after Applicant's Mark was being used in commerce, in an advertisement at a rest stop.

INTERROGATORY NO. 19

Describe each search or investigation conducted by or on behalf of You in connection with, or concerning, Opposer's Marks or any variation thereof, including, but not limited to, any search of the records of the United States Patent and Trademark Office or of any other records or publications.

RESPONSE AND/OR OBJECTION NO. 19

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant responds as follows: Applicant

used an attorney to search the records of the United States Patent and Trademark Office prior to filing his class 25 registration.

INTERROGATORY NO. 20

Describe any instances of an inquiry or comment regarding an association between Applicant's Goods on the one hand, and Opposer's products bearing Opposer's Marks, including the Claw Icon mark, on the other hand, including identifying all persons having knowledge thereof and all documents relating thereto.

RESPONSE AND/OR OBJECTION NO. 20

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague and ambiguous with respect to "instances of an inquiry or comment." Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant responds as follows: Applicant recalls no instances as listed in Interrogatory No. 20.

INTERROGATORY NO. 21

Describe the factual bases supporting Applicant's allegation in paragraph 1 of Applicant's Affirmative Defenses that "Opposer has failed to state a claim upon which relief can be granted."

RESPONSE AND/OR OBJECTION NO. 21

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it calls for the legal reasoning and theories of the Applicant's contentions. Applicant further objects on the ground that this interrogatory calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

INTERROGATORY NO. 22

Describe the factual bases supporting Applicant's allegation in paragraph 2 of Applicant's Affirmative Defenses that "[t]here is no likelihood of confusion with Opposer's mark to bar registration of Applicant's mark under Lanham Act §2(d)."

RESPONSE AND/OR OBJECTION NO. 22

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it calls for the legal reasoning and theories of the Applicant's contentions. Applicant

further objects on the ground that this interrogatory calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

INTERROGATORY NO. 23

Describe the factual bases supporting Applicant's allegation in paragraph 3 of Applicant's Affirmative Defenses that "[t]here is no dilution of Opposer's mark by Applicant's mark under Lanham Act §43(c)."

RESPONSE AND/OR OBJECTION NO. 23

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it calls for the legal reasoning and theories of the Applicant's contentions. Applicant further objects on the ground that this interrogatory calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

INTERROGATORY NO. 24

Describe in detail the circumstances surrounding Applicant's selection and use of the wording "UNLEASH YOUR INNER MONSTER", including the first use of that wording.

RESPONSE AND/OR OBJECTION NO. 24

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague and ambiguous with respect to "circumstances." Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant responds as follows: Applicant used the phrase "UNLEASH YOUR INNER MONSTER" in association with Applicant's Mark beginning in 2007-08 to celebrate the third birthday of Applicant's company Monsterfishkeepers.

INTERROGATORY NO. 25

Describe in detail the circumstances surrounding Applicant's selection and use of the



design

, including the first use of that design.

RESPONSE AND/OR OBJECTION NO. 25

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the

ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague and ambiguous with respect to "circumstances." Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant responds as follows: Applicant created the patch shown in Interrogatory No. 25 approximately three months ago to give to his child's jujitsu team for inspiration at children's jujitsu competitions.

INTERROGATORY NO. 26

Identify each person whom Applicant expects to call as a witness to give evidence in this proceeding, and for each such person, state the facts and subject matter about which they are expected to testify.

RESPONSE AND/OR OBJECTION NO. 26

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant responds as follows: At this time, Applicant does not expect to call any witnesses.

INTERROGATORY NO. 27

Identify each person who participated in the preparation of the responses to these Interrogatories.

RESPONSE AND/OR OBJECTION NO. 27

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of objections, Applicant responds as follows: Applicant and Applicant's attorney, Eve J. Brown.

INTERROGATORY NO. 28

Identify all documents referenced or relied upon in preparing Applicant's responses to these Interrogatories.

RESPONSE AND/OR OBJECTION NO. 28:

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of objections, Applicant responds as follows: Applicant did not reference or rely upon any documents in preparing Applicant's responses to these Interrogatories.

APPLICANT AND ATTORNEY SIGNATURES

Date:

4.10.13

April 10, 2013

Li-Wei Chih **Applicant**

By: /EveBrown/

Eve Brown Attorney for Applicant 120 Tremont Street Boston, Massachusetts 02108 Email: ebrown1@suffolk.edu Tel: (617) 305-1641

Fax: (617) 742-2139

CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2013, I caused a copy of Applicant's Responses to Opposer's First Set of Interrogatories to be served on Opposer in this matter by electronic mail to the counsel listed below:

Steven J. Nataupsky Knobbe Martens Olson & Bear LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 (949) 760-0404 steven.nataupsky@knobbe.com

Diane M. Reed Knobbe Martens Olson & Bear LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 (949) 760-0404 Diane.Reed@knobbe.com

Lynda Zadra-Symes Knobbe Martens Olson & Bear LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 (949) 760-0404 lynda.zadra-symes@knobbe.com

Brigette B. Chaput Knobbe Martens Olson & Bear LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 (949) 760-0404 brigette.chaput@knobbe.com

Dated: April 10, 2013

By: /EveBrown/

Eve Brown
Attorney for Applicant
120 Tremont Street
Boston, Massachusetts 02108
Email: ebrown1@suffolk.edu

Tel: (617) 305-1641 Fax: (617) 742-2139

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MONSTER ENERGY COMPANY, Opposer)	
)	
V.)	Opposition No: 91205924
)	Serial No.: 85/508374
	(a)	Mark: M
CHIH, LI-WEI, Applicant.)	
	ĺ	

APPLICANT'S RESPONSE TO OPPOSER'S SECOND SET OF INTERROGATORIES

NOS. 29-30

Pursuant to the Rules of Practice of the United States Trademark Trial and Appeal Board and the applicable Federal Rules of Civil Procedure, Applicant Li-Wei Chih hereby responds to Opposer Monster Energy Company's First Set of Interrogatories, in writing and under oath.

DEFINITIONS

- 1. The term "Applicant" as used herein denotes Li-Wei Chih.
- 2. The term "Opposer" as used herein denotes Monster Energy Company, its subsidiaries and divisions, its predecessors and successors, and officers, directors, employees, agents, and representatives thereof.
- 3. The term "Notice of Opposition" as used herein denotes Opposer's Notice of Opposition, filed with the United States Patent and Trademark Office, in opposition of Applicant's application for registration of the "MONSTERFISHKEEPERS" Mark.
- 4. The term "Applicant's Mark" as used herein denotes the "MONSTERFISHKEEPERS" Mark, serial No. 85/518,033, as before the United States Patent and Trademark Office for registration.

5. The term "Monsterfish" or "monsterfish" as used herein denotes large, rare and exotic fish of all species.

GENERAL OBJECTIONS

The following general objections are incorporated by reference in response to each and every Interrogatory set forth below and are not waived with respect to any response. The following responses are based upon information and writings presently available to Applicant.

A. Applicant objects to the Opposer's "Definitions" to the extent they exceed the requirements of, or purport to create obligations greater than those imposed by the FRCP and the TBMP.

- B. Applicant objects to the Interrogatories to the extent that they call for production of information, documents, or things protected from disclosure by the attorney-client privilege, the work-product doctrine, and any other applicable privilege, immunity or other limitation on discovery. Applicant hereby asserts this general objection with respect to each Interrogatory to the extent the Interrogatory is broadly interpreted to encompass privileged information, documents or things. Moreover, should any such response by Applicant occur, it was inadvertent and shall not constitute a waiver of privilege or of Applicant's right to object during this Opposition or otherwise to the use of any such information, documents, or things.
- C. Applicant objects to the Interrogatories to the extent that they seek information, documents or things that are not relevant to this Opposition, or are not reasonably calculated to lead to the discovery of admissible evidence.
- D. Applicant objects to the Interrogatories to the extent that they seek information, documents or things not in Applicant's possession, custody, or control.

- E. Applicant objects to the Interrogatories to the extent that they are overbroad, unduly burdensome, or fail to describe the information, documents, or things sought with a reasonable degree of specificity.
- F. Applicant objects to the Interrogatories to the extent that they seek private, privileged and confidential commercial, financial, trade secret and/or proprietary business information.
- G. Applicant objects to the Interrogatories to the extent that they contain discrete subparts contrary to FCRP Rule 33(a).
- H. As discovery is ongoing, and Applicant's investigation is continuing, Applicant reserves its right to supplement its responses herein and its production with any responsible, non-privileged information, documents or things that may be subsequently discovered.

INTERROGATORIES

INTERROGATORY NO. 29

Describe in detail how and in what way any of Opposer's Marks were considered or referenced during the selection, development, or design of Applicant's Mark.

RESPONSE AND/OR OBJECTION NO. 29

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of objections, Applicant responds as follows: Applicant directs Opposer's attention to Exhibit JJ from Applicant's Responses to Opposer's Requests for Production of Documents.

INTERROGATORY NO. 30

Identify all third-party product names, service names, or marks of which you are aware that consist of a stylized letter "M."

RESPONSE AND/OR OBJECTION NO. 30

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant further objects to this Interrogatory on the grounds that this information is readily available to Opposer at the United States Patent and Trademark Office website.

Dated: April 30, 2013

Li-Wei Chih Applicant

By: /EveBrown/

Eve Brown Attorney for Applicant 120 Tremont Street Boston, Massachusetts 02108 Email: ebrown1@suffolk.edu

Tel: (617) 305-1641 Fax: (617) 742-2139

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2013, I caused a copy of Applicant's Responses to Opposer's Second Set of Interrogatories to be served on Opposer in this matter by electronic mail to the counsel listed below:

Steven J. Nataupsky Knobbe Martens Olson & Bear LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 (949) 760-0404 steven.nataupsky@knobbe.com

Diane M. Reed Knobbe Martens Olson & Bear LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 (949) 760-0404 Diane.Reed@knobbe.com

Lynda Zadra-Symes Knobbe Martens Olson & Bear LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 (949) 760-0404 lynda.zadra-symes@knobbe.com

Brigette B. Chaput Knobbe Martens Olson & Bear LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 (949) 760-0404 brigette.chaput@knobbe.com

Dated: May 2, 2013

By: /EveBrown/

Eve Brown Attorney for Applicant 120 Tremont Street Boston, Massachusetts 02108 Email: ebrown1@suffolk.edu

Tel: (617) 305-1641 Fax: (617) 742-2139

EXHIBIT 4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MONSTER ENERGY COMPANY, Opposer)	
)	
\mathbf{v}_{r})	Opposition No: 91205924
)	Serial No.: 85/508374
)	Mark: M
CHIH, LI-WEI, Applicant.)	
)	

APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 1-60

Pursuant to the Rules of Practice of the United States Trademark Trial and Appeal Board and the applicable Federal Rules of Civil Procedure, Applicant Li-Wei Chih hereby responds to Opposer Monster Energy Company's First Set of Requests for Production of Documents and Things Nos. 1-60, in writing and under oath.

DEFINITIONS

- 1. The term "Applicant" as used herein denotes Li-Wei Chih.
- 2. The term "Opposer" as used herein denotes Monster Energy Company, its subsidiaries and divisions, its predecessors and successors, and officers, directors, employees, agents, and representatives thereof.
- 3. The term "Notice of Opposition" as used herein denotes Opposer's Notice of Opposition, filed with the United States Patent and Trademark Office, in opposition of Applicant's application for registration of the "M" Mark.
- 4. The term "Applicant's Mark" as used herein denotes the "M" Mark, serial No. 85/508,374, as before the United States Patent and Trademark Office for registration.

5. The term "Monsterfish" or "monsterfish" as used herein denotes large, rare and exotic fish of all species.

GENERAL OBJECTIONS

The following general objections are incorporated by reference in response to each and every Request for Production set forth below and are not waived with respect to any response.

The following responses are based upon information and writings presently available to Applicant.

A. Applicant objects to the Opposer's "Definitions" to the extent they exceed the requirements of, or purport to create obligations greater than those imposed by the FRCP and the TBMP.

B. Applicant objects to the Requests for Production, ("Request(s)"), to the extent that they call for production of information, documents, or things protected from disclosure by the attorney-client privilege, the work-product doctrine, and any other applicable privilege, immunity or other limitation on discovery. Applicant hereby asserts this general objection with respect to each Request to the extent the Request is broadly interpreted to encompass privileged information, documents or things. Moreover, should any such response by Applicant occur, it was inadvertent and shall not constitute a waiver of privilege or of Applicant's right to object during this Opposition or otherwise to the use of any such information, documents, or things.

C. Applicant objects to the Requests to the extent that they seek information, documents or things that are not relevant to this Opposition, or are not reasonably calculated to lead to the discovery of admissible evidence.

D. Applicant objects to the Requests to the extent that they seek information, documents

or things not in Applicant's possession, custody, or control.

- E. Applicant objects to the Requests to the extent that they are overbroad, unduly burdensome, or fail to describe the information, documents, or things sought with a reasonable degree of specificity.
- F. Applicant objects to the Requests to the extent that they seek private, privileged and confidential commercial, financial, trade secret and/or proprietary business information.
- G. Applicant objects to the Requests to the extent that they contain discrete subparts contrary to FCRP Rule 33(a).
- H. As discovery is ongoing, and Applicant's investigation is continuing, Applicant reserves its right to supplement its responses herein and its production with any responsible, non-privileged information, documents or things that may be subsequently discovered.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1

All documents and things referring or relating to the selection or adoption of Applicant's Mark, including, but not limited to, how Applicant created, conceived, selected, cleared and acquired Applicant's Mark, whether in the United States or abroad.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 1

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant further objects to this Request on the grounds that it is vague and ambiguous, with respect to "created," "conceived," "selected," "cleared," "adopted," and "acquired." Applicant objects further on the ground that it contains discrete subparts contrary to FCRP Rule 33(a), that it comprises more than one interrogatory.

Applicant further objects on the ground that it calls for information or documents or things protected by attorney-client privilege, by the work-product doctrine, or by other applicable privilege, immunity, or other limitation on discovery.

Subject to and without waiver of the objection, Applicant responds as follows: Please see Exhibit JJ and Exhibit KK.

REQUEST FOR PRODUCTION NO. 2

All documents and things referring or relating to any trademark search or research conducted by or on behalf of Applicant directed to Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 2

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Request on the ground that it calls for information or documents or things protected by attorney-client privilege, by the work-product doctrine, or by other applicable privilege, immunity, or other limitation on discovery.

Subject to and without waiver of the objection, Applicant responds as follows: Please see Exhibit JJ and Exhibit KK.

REQUEST FOR PRODUCTION NO. 3

All documents and things referring or relating to any inquiry or investigation made by or on behalf of Applicant with respect to any trademark revealed in any such trademark search or research directed to Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 3

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Request on the ground that it calls for information or documents or things protected by attorney-client privilege, by the work-product doctrine, or by other applicable privilege, immunity, or other limitation on discovery.

Subject to and without waiver of the objection, Applicant responds as follows: Please see Exhibit JJ and Exhibit KK.

REQUEST FOR PRODUCTION NO. 4

All documents and things referring or relating to any research, inquiry or investigation made by or on behalf of Applicant with respect to Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 4

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Request on the ground that it calls for information or documents or things protected by attorney-client privilege, by the work-product doctrine, or by other applicable privilege, immunity, or other limitation on discovery.

Subject to and without waiver of the objection, Applicant responds as follows: Please see Exhibit JJ and Exhibit KK.

REQUEST FOR PRODUCTION NO. 5

All documents and things referring or relating to any opinion regarding Applicant's right to use Applicant's Mark in connection with any good or service.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 5

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Request on the ground that it calls for information or documents or things protected by attorney-client privilege, by the work-product doctrine, or by other applicable privilege, immunity, or other limitation on discovery.

Subject to and without waiver of the objection, Applicant responds as follows: Please see Exhibit JJ and Exhibit KK.

REQUEST FOR PRODUCTION NO. 6

All documents and things referring or relating to Applicant's application for registration of Applicant's mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 6

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Request on the ground that it calls for information or documents or things protected by attorney-client privilege, by the work-product doctrine, or by other applicable privilege, immunity, or other limitation on discovery. Applicant further objects to this Request on the ground that it calls for information or documents, which are readily available to Opposer.

REQUEST FOR PRODUCTION NO. 7

All documents and things referring or relating to market surveys or other research directed to Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 7

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant

reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things referring or relating to market surveys or other research directed to Applicant's Mark.

REQUEST FOR PRODUCTION NO. 8

All documents and things referring or relating to any and all goods that have been licensed, distributed and/or sold by Applicant or any other person or entity authorized by Applicant bearing or in connection with Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 8

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Applicant has no documents or things referring or relating to any and all goods that have been licensed, distributed and/or sold by Applicant or any other person or entity authorized by Applicant bearing or in connection with Applicant's Mark.

REQUEST FOR PRODUCTION NO. 9

All documents and things referring or relating to the goods or services in connection with which Opposer currently uses or licenses, or has used or licensed, the Asserted Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 9

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Applicant has no documents or things referring or relating to the goods or services in connection with Which Opposer currently uses or licenses, or has used or licensed, the Asserted Mark.

REQUEST FOR PRODUCTION NO. 10

Samples of each product, label, tag, packaging, container, sign, brochures, advertisement, or catalog showing Applicant's past use, current use and/or intended use of Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 10

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Please see "Exhibit A," "Exhibit B," "Exhibit C," "Exhibit D," "Exhibit E," "Exhibit F," "Exhibit G," "Exhibit H," "Exhibit I," "Exhibit J," "Exhibit K," "Exhibit L," "Exhibit U (1-3)," "Exhibit V (1-7)," "Exhibit W (1-9)," "Exhibit X (1-8)," "Exhibit Y (1-12)," "Exhibit Z (1-6)," "Exhibit AA (1-5)," "Exhibit BB (1-8)," "Exhibit CC (1-8)" and "Exhibit DD (1-8)," "Exhibit EE," "Exhibit FF," "Exhibit GG," "Exhibit HH," and "Exhibit II."

REQUEST FOR PRODUCTION NO. 11

All documents and things referring or relating to the directions and/or instructions for use regarding the use and/or disposal of Applicant's products or services that are, or are intended to be affixed, marketed, distributed and/or sold in connection with Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 11

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant

reserves the right to supplement his response.

Applicant has no documents or things referring or relating to the directions and/or instructions for use regarding the use and/or disposal of Applicant's products or services that are, or are intended to be affixed, market, distributed and/or sold in connection with Applicant's Mark.

REQUEST FOR PRODUCTION NO. 12

All documents and things referring or relating to Applicant's use or planned use of Applicant's Mark in U.S. commerce in connection with the goods and services identified in the application for Applicant's Mark during each year from the date of first use or conception to the present.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 12

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Applicant has no documents or things referring or relating to Applicant's use or planned use of Applicant's Mark in U.S. commerce in connection with the goods and services identified in the application for Applicant's Mark during each year from the date of the first use or conception to the present.

REQUEST FOR PRODUCTION NO. 13

All documents and things referring or relating to Applicant's first use or intended use of Applicant's Mark in connection with any and all goods and/or services.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 13

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant further objects to this request on the ground that it is vague and ambiguous with respect to "first use," "intended use," and "any and all goods and/or services."

REQUEST FOR PRODUCTION NO. 14

All documents and things referring or relating to the types of consumers to whom Applicant advertises and markets or to whom Applicant plans to advertise and market any goods and/or services sold in connection with Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 14

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things referring or relating to the types of consumers to whom Applicant advertises and markets or to whom Applicant plans to advertise and market any goods and/or services sold in connection with Applicant's Mark.

REQUEST FOR PRODUCTION NO. 15

All documents and things referring or relating to trade shows where Applicant has displayed any goods under Applicant's mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 15

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Please see links below:

<u>Tradeshow 1 (</u>: https://www.youtube.com/watch?feature=player_embedded&v=9I8YR44KXf0#!

<u>Tradeshow 2</u>: https://www.youtube.com/watch?feature=player_embedded&v=LoHk5rclujs

<u>Tradeshow 3</u>: https://www.youtube.com/watch?feature=player_embedded&v=vSbp1jLfC9c

<u>Tradeshow 4:</u> https://www.youtube.com/watch?feature=player_embedded&v=P3fV11-zVTU

REQUEST FOR PRODUCTION NO. 16

All documents and things referring or relating to all channels of trade through which Applicant is offering or advertising or through which Applicant intends to offer or advertise goods and/or services under Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 16

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Please see "Exhibit U (1-3)," "Exhibit V (1-7)," "Exhibit W (1-9)," "Exhibit X (1-8)," "Exhibit Y (1-12)," "Exhibit Z (1-6)," "Exhibit AA (1-5)," "Exhibit BB (1-8)," "Exhibit CC (1-8)" and "Exhibit DD (1-8)."

REQUEST FOR PRODUCTION NO. 17

All documents and things referring or relating to Applicant's channels of trade, including, but not limited to, the names and locations of wholesale and/or retail suppliers through which each good and/or service has been or is intended to be provided in connection with Applicant's

Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 17

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver to the objection, Applicant responds as follows:

Applicant has no documents or things referring or relating to Applicant's channels of trade, including, but not limited to, the names and locations of wholesale and/or retail suppliers through which each good and/or service has been or is intended to be provided in connection with Applicant's Mark.

REQUEST FOR PRODUCTION NO. 18

All documents and things referring or relating to any expansion of the channels of trade and/or to alter or expand, or plans to alter or expand, the goods and/or services in connection with which Applicant's Mark is used or will be used.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 18

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver to the objection, Applicant responds as follows:

Applicant has no documents or things referring or relating to any expansion of the channels of trade and/or to alter or expand, or plans to alter or expand, the goods and/or services in connection with which Applicant's Mark is used or will be used.

REQUEST FOR PRODUCTION NO. 19

All documents and things referring or relating to trade or industry shows attended or planned to be attended by Applicant.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 19

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver to the objection, Applicant responds as follows: Please see Applicant's Response to Request for Production No. 15.

REQUEST FOR PRODUCTION NO. 20

All documents and things referring or relating to the advertising and promotion of Applicant's Mark or of the goods and/or services sold in connection with Applicant's Mark, including, but not limited to, media in which Applicant's Mark appears, labels, boxes, packaging, instructions for use, directions for use, stickers, advertisements, brochures, flyers, pamphlets, promotional materials, magazines, articles, billboards, radio advertisements, television advertisements, Internet advertisements, or other printed or electronic publications, website or domain names.

RESPONSE AND/OR OBJECTION TO REOUEST FOR PRODUCTION NO. 20

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver to the objection, Applicant responds as follows: See "Exhibit A," "Exhibit B," "Exhibit C," "Exhibit D," "Exhibit E," "Exhibit F," "Exhibit G," "Exhibit H," "Exhibit I," "Exhibit J," "Exhibit K," "Exhibit L," "Exhibit U (1-3)," "Exhibit V (1-7)," "Exhibit W (1-9)," "Exhibit X (1-8)," "Exhibit Y (1-12)," "Exhibit Z (1-6)," "Exhibit AA

(1-5)," "Exhibit BB (1-8)," "Exhibit CC (1-8)" and "Exhibit DD (1-8)," "Exhibit EE," "Exhibit FF," "Exhibit GG," "Exhibit HH," and "Exhibit II."

REQUEST FOR PRODUCTION NO. 21

All documents and things referring or relating to any and all advertising agencies, public relations agencies, marketing firms, market research agencies, or other person(s) which Applicant has used, participated with, or cooperated with in advertising, marketing or promoting any goods and/or services offered in connection with Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 21

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this request on the ground that it is vague and ambiguous with respect to "advertising agencies," "public relations agencies," "marketing firms," "market research agencies," "or other person(s)." Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents encompassed by Opposer's Request for Production No. 21.

REQUEST FOR PRODUCTION NO. 22

All drawings of specimens of any logos, which use or incorporate Applicant's Mark, whether in draft or final form.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 22

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver to the objection, Applicant responds as follows:

See "Exhibit P," "Exhibit Q," "Exhibit R," "Exhibit S," and "Exhibit T."

REQUEST FOR PRODUCTION NO. 23

All press releases issued by or on behalf of Applicant that refer to Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 23

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver to the objection, Applicant responds as follows:

Applicant has no press releases by or on behalf of Applicant, which refer to Applicant's Mark.

REQUEST FOR PRODUCTION NO. 24

All documents and things reflecting any mention in the press of Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 24

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver to the objection, Applicant responds as follows: Applicant knows of one, (1), mention in the press of Applicant's Mark. Such mention can be found at the link below:

http://www.bostonglobe.com/business/2013/03/16/suffolk-law-clinic-monster-legal-fight/IMtKnxH2DydgHEy6GWDp6M/story.html.

REQUEST FOR PRODUCTION NO. 25

All documents and things referring or relating to any and all print publications in which

in which You have advertised or You plan or intend to advertise any goods bearing or using Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 25

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver to the objection, Applicant responds as follows: Please see "Exhibit U (1-3)," "Exhibit V (1-7)," "Exhibit W (1-9)," "Exhibit X (1-8)," "Exhibit Y (1-12)," "Exhibit Z (1-6)," "Exhibit AA (1-5)," "Exhibit BB (1-8)," "Exhibit CC (1-8)" and "Exhibit DD (1-8)."

REQUEST FOR PRODUCTION NO. 26

All documents and things referring or relating to any magazine, newspaper or other printed publication that contain an article or other story relating to goods and/or services sold or offered under Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 26

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Please see Applicant's Response to Request for Production No. 24.

REQUEST FOR PRODUCTION NO. 27:

All documents and things referring or relating to Applicant's advertising and promotional budget for Applicant's Mark from the first use of Applicant's Mark to the present.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 27:

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things referring or relating to Applicant's advertising and promotional budget for Applicant's Mark from the first use of Applicant's Mark to the present.

REQUEST FOR PRODUCTION NO. 28

All documents and things referring or relating to any agreements referring or relating to Applicant's Mark or any variation thereof.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 28

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things referring or relating to any agreements referring or relating to Applicant's Mark or any variation thereof.

REQUEST FOR PRODUCTION NO. 29

All documents and things referring or relating to any agreements referring or relating to any goods or services offered under Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 29

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things referring or relating to any agreements referring or relating to any goods or services offered under Applicant's Mark.

REQUEST FOR PRODUCTION NO. 30

All documents and things referring or relating to Applicant's total sales of each product sold under Applicant's Mark for each year since the date of first use.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 30

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Please see "Exhibit M," "Exhibit N," and "Exhibit O."

REQUEST FOR PRODUCTION NO. 31

All documents and things referring or relating to any grant or acquisition of rights in Applicant's Mark through assignment, license, or other transfer of any rights to or from Applicant.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 31

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant

has no documents or things referring or relating to any grant or acquisition of rights in Applicant's Mark through assignment, license, or other transfer of any rights to or from Applicant.

REQUEST FOR PRODUCTION NO. 32

All documents and things referring or relating to any claimed predecessor in title to Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 32

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things referring or relating to any claimed predecessor in title to Applicant's Mark.

REQUEST FOR PRODUCTION NO. 33

All documents and things referring or relating to any objection raised to Applicant's use or registration of Applicant's Mark by any person or entity.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 33

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Request on the ground that such documents and things are readily available to Opposer on the USPTO website found at www.uspto.gov.

REQUEST FOR PRODUCTION NO. 34

All documents and things referring or relating to all federal or state trademark registrations, applications, or common law marks owned or used by Applicant, or any third party, upon which Applicant may rely for any purpose in this opposition proceeding.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 34

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this request on the ground that calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

REQUEST FOR PRODUCTION NO. 35

All documents and things referring or relating to any lawsuits, proceedings, or other formal legal proceedings to which Applicant was a party that were based on, concerned, or involved Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 35

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Please refer to Opposer's Opposition as the only formal legal proceeding to which Applicant was or is a party, that is based on, concerned, or involves Applicant's Mark.

REQUEST FOR PRODUCTION NO. 36

All documents and things referring or relating to any settlement, coexistence and/or

consent agreements which Applicant was or is a party are based upon, concern or involve Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 36

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things referring or relating to any settlement, coexistence and/or consent agreements, which Applicant was or is a party are based upon, concern or involve Applicant's Mark.

REQUEST FOR PRODUCTION NO. 37

All documents and things referring or relating to any effort by Applicant to enforce Applicant's Mark, including, but not limited to, any cease and desist letters sent by Applicant relating to Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 37

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things referring or relating to any effort by Applicant to enforce Applicant's Mark, including, but not limited to, any cease and desist letters sent by Applicant relating to Applicant's Mark.

REQUEST FOR PRODUCTION NO. 38

All documents and things referring or relating to transactions or communications between Applicant and any of Applicant's current or former agents or employees that relate to Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 38

Applicant incorporates by this reference its General Objections as if set forth fully hercin. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things referring or relating to transactions or communications between Applicant and any of Applicant's current or former agents or employees that relate to Applicant's Mark.

REQUEST FOR PRODUCTION NO. 39

All communications between Applicant and any third party relating to Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 39

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Request to the extent that it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

REQUEST FOR PRODUCTION NO. 40

All documents and things referring or relating to the pricing for the goods and/or services offered under Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 40

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Please see Applicant's online monsterfish forum at www.monsterfishkeepers.com.

REQUEST FOR PRODUCTION NO. 41

All documents and things referring or relating to Applicant's total sales (in units and dollars) of each product or service sold under Applicant's Mark on a monthly basis from the date of first sale to the present.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 41

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Please see "Exhibit M," "Exhibit N," and "Exhibit O."

REQUEST FOR PRODUCTION NO. 42

All documents and things upon with Applicant may rely upon in this opposition proceeding.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 42

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant

reserves the right to supplement his response. Applicant objects to this Request to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

REQUEST FOR PRODUCTION NO. 43

All documents and things referring or relating to any contacts Applicant has had with experts in connection with this opposition proceeding.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 43

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things referring or relating to any contacts Applicant has had with experts in connection with this opposition proceeding.

REQUEST FOR PRODUCTION NO. 44

All documents and things exchanged between Applicant and any expert in this opposition proceeding.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 44

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things exchanged between Applicant and any expert in this opposition proceeding.

REQUEST FOR PRODUCTION NO. 45

For each expert whose opinion Applicant may rely upon in this opposition proceeding, all documents referring or relating to any of the following:

- a) any opinions that may be presented;
- b) the reason for such opinions;
- c) any data or information considered by the witness in forming the opinions;
- d) any exhibits used in support of or summarizing the opinions;
- e) the compensation being paid to the witness; and
- f) any cases in which the witness has testified at trial or by deposition.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 45

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents referring to any of the sub-parts contained in Opposer's Request for Production No. 45.

REQUEST FOR PRODUCTION NO. 46

All documents and things referring or relating to Applicant's selection and use of the



design

, including the first use of that design.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 46

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things referring or relating to Applicant's selection and use of the design in Opposer's Request for Production No. 46. Please see "Exhibit E."

REQUEST FOR PRODUCTION NO. 47

All documents and things referring or relating to Applicant's selection and use of the wording "UNLEASH YOUR INNER MONSTER", including the first use of that wording.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 47

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver to the objection, Applicant responds as follows: Applicant has no documents or things referring or relating to Applicant's selection and use of the wording "UNLEASH YOUR INNER MONSTER," including the first use of that wording.

REQUEST FOR PRODUCTION NO. 48

All documents and things referring or relating to Opposer, Opposer's Marks, or Opposer's products.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 48

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Request on the ground

that the documents and things requested are readily available to Opposer.

REQUEST FOR PRODUCTION NO. 49

All communications referring or relating to Opposer's Marks, or Opposer's products.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 49

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Request to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

REQUEST FOR PRODUCTION NO. 50:

All documents and things referring or relating to Applicant's first awareness of Opposer, Opposer's Marks, or Opposer's products.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 50

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things referring or relating to Applicant's first awareness of Opposer, Opposer's Marks, or Opposer's products.

REQUEST FOR PRODUCTION NO. 51

All documents and things referring or relating to any comments or inquiries from

customers or potential customers that Applicant has received relating to Opposer's Marks, or Opposer's products.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 51

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Please see Applicant's business website found at the link below: www.monsterfishkeepers.com. Please see Applicant's fan page found at the link below:

http://www.facebook.com/MonsterFishKeepers?ref=ts&fref=ts.

REQUEST FOR PRODUCTION NO. 52

All documents and things referring or relating to any confusion on the part of any person or entity as to the source, sponsorship, or affiliation of Applicant's goods or services offered under Applicant's Mark on the one hand, and Opposer's goods or services offered under Opposer's Marks on the other hand.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 52

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things referring or relating to any confusion on the part of any person or entity as to the source, sponsorship, or affiliation of Applicant's goods or services offered under Applicant's Mark on the one hand, and Opposer's goods or services offered under Opposer's Marks on the other hand.

REQUEST FOR PRODUCTION NO. 53

All documents and things referring or relating to transactions or communications between Opposer and Applicant.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 53

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Request on the ground that such documents and things are readily available to Opposer. Applicant further objects to this Request to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

REQUEST FOR PRODUCTION NO. 54

All documents and things referring or relating to Applicant's policies regarding retention, storage, filing and destruction of documents and things.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 54

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things referring or relating to Applicant's policies regarding retention, storage, filing and destruction of documents and things.

REQUEST FOR PRODUCTION NO. 55

All documents and things used or referred to in connection with the preparation of Applicant's responses to the Interrogatories served by Opposer in this opposition proceeding.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 55

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things used or referred to in connection with the preparation of Applicant's responses to the Interrogatories served by Opposer in this opposition proceeding.

REQUEST FOR PRODUCTION NO. 56

All documents and things identified in Your Initial Disclosures.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 56

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant further objects on the ground that the requested documents are readily available to Opposer.

REQUEST FOR PRODUCTION NO. 57

All documents and things used or referred to in connection with the preparation of Applicant's responses to the Requests for Admission served by Opposer in this opposition proceeding.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 57

Applicant incorporates by this reference its General Objections as if set forth fully herein.

As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things used or referred to in connection with the preparation of Applicant's responses to the Requests for Admission served by Opposer in this opposition proceeding.

REQUEST FOR PRODUCTION NO. 58

All documents and things referring or relating to the First Affirmative Defense contained in Your Answer to Opposer's Notice of Opposition.

RESPONSE AND/OR OBJECTION TO REQUEST FOR ADMISSION NO. 58

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant further objects on the ground that the requested documents are readily available to Opposer.

REQUEST FOR PRODUCTION NO. 59

All documents and things referring or relating to the Second Affirmative Defense contained in Your Answer to Opposer's Notice of Opposition.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 59

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant further objects on the ground that the requested documents are readily available to Opposer.

REQUEST FOR PRODUCTION NO. 60

All documents and things referring or relating to the Third Affirmative Defense contained in Your Answer to Opposer's Notice of Opposition.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 60

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant further objects on the ground that the requested documents are readily available to Opposer.

TABLE OF CONTENTS: EXHIBITS

Exhibits A through L and Exhibits EE through II are material or tangible evidence ("Hard Evidence") rather than electronic. The Hard Evidence has thus been sent via physical mail to the appropriate individuals or attorneys at Knobbe Martens Olson & Bear LLP, 2040 Main Street, Fourteenth Floor, Irvine, CA 92614.

- 1. Exhibit A-Advertisement
- 2. Exhibit B-Advertisement
- 3. Exhibit C-Sticker
- 4. Exhibit D-MFK Bracelet
- 5. Exhibit E-"M" Patch
- 6. Exhibit F-Monsterfishkeepers.com Business Card
- 7. Exhibit G-MFK Sticker
- 8. Exhibit H-"M" Metal Logo
- 9. Exhibit I-"M" Decal
- 10. Exhibit J-"M" Metal Logo

- 11. Exhibit K-"M" Metal Keychain
- 12. Exhibit L-"M" Temporary Tattoo
- 13. Exhibit M-PayPal Sales Record
- 14. Exhibit N-PayPal Sales Record
- 15. Exhibit O-PayPal Sales Record
- 16. Exhibit P-MFK Logo Drafts
- 17. Exhibit Q-MFK Logo Drafts
- 18. Exhibit R-MFK Logo Drafts
- 19. Exhibit S-MFK Logo Drafts
- 20. Exhibit T-MFK Logo Drafts
- 21. Exhibit U-1-Advertisement
- 22. Exhibit U-2-Advertisement
- 23. Exhibit U-3-Advertisement
- 24. Exhibit V-1-Advertisement
- 25. Exhibit V-2-Advertisement
- 26. Exhibit V-3-Advertisement
- 27. Exhibit V-4-Advertisement
- 28. Exhibit V-5-Advertisement
- 29. Exhibit V-6-Advertisement
- 30. Exhibit V-7-Advertisement
- 31. Exhibit W-1-Advertisement
- 32. Exhibit W-2-Advertisement
- 33. Exhibit W-3-Advertisement

- 34. Exhibit W-4-Advertisement
- 35. Exhibit W-5-Advertisement
- 36. Exhibit W-6-Advertisement
- 37. Exhibit W-7-Advertisement
- 38. Exhibit W-8-Advertisement
- 39. Exhibit W-9-Advertisement
- 40. Exhibit X-1-Advertisement
- 41. Exhibit X-2-Advertisement
- 42. Exhibit X-3-Advertisement
- 43. Exhibit X-4-Advertisement
- 44. Exhibit X-5-Advertisement
- 45. Exhibit X-6-Advertisement
- 46. Exhibit X-7-Advertisement
- 47. Exhibit X-8-Advertisement
- 48. Exhibit Y-1-Advertisement
- 49. Exhibit Y-2-Advertisement
- 50. Exhibit Y-3-Advertisement
- 51. Exhibit Y-4-Advertisement
- 52. Exhibit Y-5-Advertisement
- 53. Exhibit Y-6-Advertisement
- 54. Exhibit Y-7-Advertisement
- 55. Exhibit Y-8-Advertisement
- 56. Exhibit Y-9-Advertisement

- 57. Exhibit Y-10-Advertisement
- 58. Exhibit Y-11-Advertisement
- 59. Exhibit Y-12-Advertisement
- 60. Exhibit Z-1-Advertisement
- 61. Exhibit Z-2-Advertisement
- 62. Exhibit Z-3-Advertisement
- 63. Exhibit Z-4-Advertisement
- 64. Exhibit Z-5-Advertisement
- 65. Exhibit Z-6-Advertisement
- 66. Exhibit AA-1-Advertisement
- 67. Exhibit AA-2-Advertisement
- 68. Exhibit AA-3-Advertisement
- 69. Exhibit AA-4-Advertisement
- 70. Exhibit AA-5-Advertisement
- 71. Exhibit BB-1-Advertisement
- 72. Exhibit BB-2-Advertisement
- 73. Exhibit BB-3-Advertisement
- 74. Exhibit BB-4-Advertisement
- 75. Exhibit BB-5-Advertisement
- 76. Exhibit BB-6-Advertisement
- 77. Exhibit BB-7-Advertisement
- 78. Exhibit BB-8-Advertisement
- 79. Exhibit CC-1-Advertisement

- 80. Exhibit CC-2-Advertisement
- 81. Exhibit CC-3-Advertisement
- 82. Exhibit CC-4-Advertisement
- 83. Exhibit CC-5-Advertisement
- 84. Exhibit CC-6-Advertisement
- 85. Exhibit CC-7-Advertisement
- 86. Exhibit CC-8-Advertisement
- 87. Exhibit DD-1-Advertisement
- 88. Exhibit DD-2-Advertisement
- 89. Exhibit DD-3-Advertisement
- 90. Exhibit DD-4-Advertisement
- 91. Exhibit DD-5-Advertisement
- 92. Exhibit DD-6-Advertisement
- 93. Exhibit DD-7-Advertisement
- 94. Exhibit DD-8-Advertisement
- 95. Exhibit EE-MFK Hat
- 96. Exhibit FF-MFK Hat
- 97. Exhibit GG-MFK T-Shirt
- 98. Exhibit HH-MFK T-Shirt
- 99. Exhibit II-MFK T-Shirt
- 100. Exhibit JJ-Trademark Search "M" Mark
- 101. Exhibit KK-Trademark Search "MFK" Mark

APPLICANT AND ATTORNEY SIGNATURES

Li-Wei Chih Applicant

By: /EveBrown/

Eve Brown Attorney for Applicant 120 Tremont Street Boston, Massachusetts 02108 Email: ebrown1@suffolk.edu Tel: (617) 305-1641

Fax: (617) 742-2139

CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2013, I caused a copy of Applicant's Responses to Opposer's First Set of Interrogatories to be served on Opposer in this matter by electronic mail to the counsel listed below:

Steven J. Nataupsky Knobbe Martens Olson & Bear LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 (949) 760-0404 steven.nataupsky@knobbe.com

Diane M. Reed Knobbe Martens Olson & Bear LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 (949) 760-0404 Diane.Reed@knobbe.com

Lynda Zadra-Symes Knobbe Martens Olson & Bear LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 (949) 760-0404 lynda.zadra-symes@knobbe.com

Brigette B. Chaput Knobbe Martens Olson & Bear LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 (949) 760-0404 brigette.chaput@knobbe.com

Dated: April 10, 2013

By: /EveBrown/

Eve Brown
Attorney for Applicant
120 Tremont Street
Boston, Massachusetts 02108
Email: ebrown1@suffolk.edu
Tel: (617) 305-1641

Fax: (617) 742-2139

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MONSTER ENERGY COMPANY, Opposer)	
V,)	Opposition No: 91205924
)	Serial No.: 85/508374 Mark: M
CHIH, LI-WEI, Applicant.)	
)	

APPLICANT'S RESPONSE TO OPPOSER'S SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 61-70

Pursuant to the Rules of Practice of the United States Trademark Trial and Appeal Board and the applicable Federal Rules of Civil Procedure, Applicant Li-Wei Chih hereby responds to Opposer Monster Energy Company's First Set of Requests for Production of Documents and Things Nos. 1-60, in writing and under oath.

DEFINITIONS

- 1. The term "Applicant" as used herein denotes Li-Wei Chih.
- 2. The term "Opposer" as used herein denotes Monster Energy Company, its subsidiaries and divisions, its predecessors and successors, and officers, directors, employees, agents, and representatives thereof.
- 3. The term "Notice of Opposition" as used herein denotes Opposer's Notice of Opposition, filed with the United States Patent and Trademark Office, in opposition of Applicant's application for registration of the "M" Mark.
- 4. The term "Applicant's Mark" as used herein denotes the "M" Mark, serial No. 85/508,374, as before the United States Patent and Trademark Office for registration.

5. The term "Monsterfish" or "monsterfish" as used herein denotes large, rare and exotic fish of all species.

GENERAL OBJECTIONS

The following general objections are incorporated by reference in response to each and every Request for Production set forth below and are not waived with respect to any response. The following responses are based upon information and writings presently available to Applicant.

A. Applicant objects to the Opposer's "Definitions" to the extent they exceed the requirements of, or purport to create obligations greater than those imposed by the FRCP and the TBMP.

B. Applicant objects to the Requests for Production, ("Request(s)"), to the extent that they call for production of information, documents, or things protected from disclosure by the attorney-client privilege, the work-product doctrine, and any other applicable privilege, immunity or other limitation on discovery. Applicant hereby asserts this general objection with respect to each Request to the extent the Request is broadly interpreted to encompass privileged information, documents or things. Moreover, should any such response by Applicant occur, it was inadvertent and shall not constitute a waiver of privilege or of Applicant's right to object during this Opposition or otherwise to the use of any such information, documents, or things.

C. Applicant objects to the Requests to the extent that they seek information, documents or things that are not relevant to this Opposition, or are not reasonably calculated to lead to the discovery of admissible evidence.

- D. Applicant objects to the Requests to the extent that they seek information, documents or things not in Applicant's possession, custody, or control.
- E. Applicant objects to the Requests to the extent that they are overbroad, unduly burdensome, or fail to describe the information, documents, or things sought with a reasonable degree of specificity.
- F. Applicant objects to the Requests to the extent that they seek private, privileged and confidential commercial, financial, trade secret and/or proprietary business information.
- G. Applicant objects to the Requests to the extent that they contain discrete subparts contrary to FCRP Rule 33(a).
- H. As discovery is ongoing, and Applicant's investigation is continuing, Applicant reserves its right to supplement its responses herein and its production with any responsible, non-privileged information, documents or things that may be subsequently discovered.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 61

All documents and things regarding any litigation involving or related to Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 61

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things regarding any litigation involving or related to Applicant's Mark other than the documents regarding Opposer's opposition.

REQUEST FOR PRODUCTION NO. 62

All documents and things referring or relating to any objections made by Applicant to the use by another of a mark or marks believed by Applicant to be confusingly similar to Applicant's Mark, or any variation thereof.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 62

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things referring or relating to any objections made by Applicant to the use by another of a mark or marks believed by Applicant to be confusingly similar to Applicant's Mark, or any variation thereof.

REQUEST FOR PRODUCTION NO. 63

All documents and things referring or relating to the specific geographic areas within which Applicant has provided goods and/or services in the United States under Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 63

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things referring or relating to the specific geographic areas within which Applicant has provided goods and/or services in the United States under Applicant's Mark.

REQUEST FOR PRODUCTION NO. 64

All documents and things referring or relating to any plans by Applicant to expand use of Applicant's Mark, or any variation thereof, or sales or distribution of the goods and/or services, including, but not limited to, expansion of marketing lines, channels of distribution, the number of products or services in connection with which Applicant's Mark are used, the customer base or geographical areas served.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 64

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant currently has no documents or things relating to Opposer's Request for Production No. 64.

REQUEST FOR PRODUCTION NO. 65

All business plans reflecting Applicant's use or intent to use Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 65

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant currently has no business plans reflecting Applicant's use or intent to use Applicant's Mark.

REQUEST FOR PRODUCTION NO. 66

All documents and things referring to relating to the amount expended annually by Applicant and/or Applicant's licensees in advertising Applicant's Mark in the United States.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 66

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant currently has no documents or things relating to Opposer's Request for Production No. 66.

REQUEST FOR PRODUCTION NO. 67

All documents and things referring or relating to Applicant's advertising and promotional budget for Applicant's Mark from the first use of Applicant's Mark to the present.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 67

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: Applicant has no documents or things referring or relating to Opposer's Request for Production No. 67.

REQUEST FOR PRODUCTION NO. 68

Price lists of each product and/or service sold in connection with Applicant's Mark.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 68

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: All information requested by Opposer in Request for Production No. 68 is available at

http://store.monsteraquarianetwork.com.

REQUEST FOR PRODUCTION NO. 69

Documents sufficient to identify all goods and/or services that Applicant provides or intends to provide under Applicant's Marks in the United States.

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 69

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: All information requested by Opposer in Request for Production No. 69 is available at http://store.monsteraquarianetwork.com.

REQUEST FOR PRODUCTION NO. 70

All documents and things relating to any third-party marks that include a stylized letter "M".

RESPONSE AND/OR OBJECTION TO REQUEST FOR PRODUCTION NO. 70

Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of the objection, Applicant responds as follows: All information requested by Opposer in Request for Production No. 70 is available at the United States Patent and Trademark Office website. lilvale

Dated: April 30, 2013

Li-Wei Chih Applicant

By: /EveBrown/

Eve Brown
Attorney for Applicant
120 Tremont Street
Boston, Massachusetts 02108
Email: ebrown1@suffolk.edu

Tel: (617) 305-1641 Fax: (617) 742-2139

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2013, I caused a copy of Applicant's Responses to Opposer's Second Set of Interrogatories to be served on Opposer in this matter by electronic mail to the counsel listed below:

Steven J. Nataupsky Knobbe Martens Olson & Bear LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 (949) 760-0404 steven.nataupsky@knobbe.com

Diane M. Reed Knobbe Martens Olson & Bear LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 (949) 760-0404 Diane.Reed@knobbe.com

Lynda Zadra-Symes Knobbe Martens Olson & Bear LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 (949) 760-0404 lynda.zadra-symes@knobbe.com

Brigette B. Chaput Knobbe Martens Olson & Bear LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 (949) 760-0404 brigette.chaput@knobbe.com

Dated: May 2, 2013

By: /EveBrown/

Eve Brown Attorney for Applicant 120 Tremont Street Boston, Massachusetts 02108 Email: ebrown1@suffolk.edu

Tel: (617) 305-1641 Fax: (617) 742-2139

EXHIBIT 5

From:

Brigette.Chaput <Brigette.Chaput@knobbe.com>

Sent:

Wednesday, May 15, 2013 3:54 PM

To: Cc: Eve Brown (ebrown1@suffolk.edu) Lynda.Zadra-Symes; Emily.Sauter

Subject:

RE: Opposition Nos. 91205924 and 91205893 (Our Ref. HANBEV.1336M/1346M)

Attachments:

2013-05-15 Meet and Confer re Opp No. 91205893 MONSTERISHKEEPERS.PDF;

2013-05-15 Meet and Confer re Stylized M (HANBEV.1346M).pdf

Dear Eve,

Thank you for your email below. The information listed in TTABvue is accurate, so there is no need to update the notice of appearance.

Redacted

Finally, the document production you received was pursuant to the Rule 33(d) election to produce documents from which responses to the interrogatories may be ascertained. You served Applicant's Second Set of Interrogatories on the eve of the discovery cutoff, knowing that MEC's responses would not be received for 30 days, well after the discovery cutoff. MEC's written responses to the Interrogatories were timely served and stated the documents were forthcoming. MEC provided these documents in a timely manner, and accordingly MEC's production is proper.

Regarding discovery, we have reviewed your client's responses to Opposer's First Set of Requests for Admissions, First Set of Interrogatories, Nos. 1-29, and First Set of Requests for Production of Documents and Things, Nos. 1-60. These responses are deficient and need to be promptly amended and supplemented. Attached are letters addressing our concerns and including a request that we meet and confer regarding the responses.

We look forward to hearing from you.

Best regards, Brigette

Brigette Chaput

Associate
Brigette.Chaput@knobbe.com
949-721-7673 Direct



five decades. one focus. 2040 Main Street, 14th Floor Irvine, CA 92614

www.knobbe.com/brigette-chaput

From: Eve Brown [mailto:ebrown1@suffolk.edu]

Sent: Tuesday, May 14, 2013 12:33 PM

To: Brigette Chaput; Emily Sauter; Lynda Zadra-Symes

Cc: Carl Alexander Chiulli; J. Daniel Duval

Subject: Opposition Nos. 91205924 and 91205893

Dear Fmily,

I received your production documents dated May 13, 2013 in Opposition Nos. 91205924 and 91205893. It is my understanding that discovery in those cases has already closed. Please let me know the nature of this production.

If you do intend for these documents to be considered despite their timing, please specify which discovery requests the materials are responsive to.

Incidentally, this is the first I have heard of your participation in these cases. The attorney of record remains Brigette Chaput, who I have been speaking to since August. If you have joined the case, please update your appearance of counsel and send me a new caption so that I communicate with and serve the correct attorneys.

Redacted

Thank you, Eve

Eve J. Brown Intellectual Property Clinic Suffolk University Law School 120 Tremont Street, Suite 190J Boston, MA 02108 (617) 305-1641

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KNOBBE MARTENS OLSON & BEAR LLP

2040 Main St., 14th Fl., Irvine, CA 92614 T (949) 760-0404

> **Brigette Chaput** Brigette.Chaput@knobbe.com

May 15, 2013

VIA ELECTRONIC MAIL

Ms. Eve Brown Suffolk University Law School 120 Tremont Street Boston, MA 02108 ebrown1@suffolk.edu

Re:

Monster Energy Company v. Li-Wei Chih

Mark:

Opposition No.: 91205924

Our Reference No.: HANBEV.1346M

Dear Ms. Brown:

We have reviewed your client's responses to Opposer's First Set of Requests for Admissions, Nos. 1-12 First Set of Interrogatories, Nos. 1-28 ("First Set of Interrogatories"), and First Set of Requests for Production of Documents and Things, Nos. 1-60 (collectively "Discovery Requests"). The responses are severely deficient and need to be promptly amended and supplemented.

Pursuant to TBMP § 524, TBMP § 523.02, F.R.C.P. 37 and 37 C.F.R. § 2.120(e), we are writing in an attempt to reach an amicable resolution of these discovery disputes. If Applicant does not adequately address all the issues identified in this letter by May 22, 2013, Opposer will have no alternative but to file motions with the Trademark Trial and Appeal Board (the "Board") to compel complete responses to Opposer's First Set of Interrogatories and First Set of Discovery Requests and to test the sufficiency of Applicant's responses to Opposer's First Set of Requests for Admissions.

A. Opposer's First Set of Requests for Admissions

Request for Admission No. 6

Opposer requested that Applicant "[a]dmit Applicant first used Applicant's Mark on Applicant's Goods in interstate commerce on May 15, 2005." Applicant admitted this Request for Admission, and accordingly represented that the

mark was placed on "Baseball caps and hats; Golf caps; Hats; Hooded sweat shirts; Knitted caps; Longsleeved shirts; Sports caps and hats; Sweaters; T-shirts; Wearable garments and clothing, namely, shirts" in interstate commerce on May 15, 2005. However, Applicant's response to Interrogatory No. 7 states that Applicant

first began selling t-shirts bearing the

mark in 2010 via Applicant's online monsterfish forum. These

responses are contradictory, as Applicant cannot have first sold t-shirts bearing the mark in both 2005 and 2010. Accordingly, Applicant must amend and/or supplement its responses immediately to resolve this contradiction.



B. Opposer's First Set of Interrogatories

INTERROGATORY NO. 1: Identify all persons with knowledge about how Applicant's Mark was created, conceived, selected, cleared, adopted, or acquired and the substance of each person's knowledge.

<u>Applicant's Response to Interrogatory No. 1:</u> Subject to and without waiver of objections, Applicant responds as follows: Li-Wei Chih, (Applicant).

Opposer's Response: Applicant's response is incomplete because it does not summarize the substance of each person's knowledge regarding the selection of Applicant's Mark. Accordingly, under Fed. R. Civ. P. 37(a)(4), Applicant's incomplete response "must be treated as a failure to disclose, answer, or respond." Applicant must respond with a complete answer.

INTERROGATORY NO. 3: Describe in detail the circumstances surrounding Applicant's selection of Applicant's Mark, including describing why and how Applicant's Mark was selected and identifying the dates Applicant's Mark was selected.

<u>Applicant's Response to Interrogatory No. 3:</u> Subject to and without waiver of objections, Applicant was keeping Monsterfish in 2004 and based the idea for his word mark off of a Japanese pictorial book titled "Monsterfishkeepers." Moreover, the idea for the "M" mark spawned from the notion that Monsterfish are devilish fish, since the devil had horns and a tail, it seemed logical to Applicant to incorporate both into the "M" mark.

Opposer's Response: Applicant's response is incomplete because it does not describe in detail the circumstances surrounding Applicant's selection of Applicant's Mark. Namely, Applicant's response does not identify the dates Applicant's Mark was selected. Accordingly, under Fed. R. Civ. P. 37(a)(4), Applicant's incomplete response "must be treated as a failure to disclose, answer, or respond." Applicant must respond with a complete answer.

INTERROGATORY NO. 5: Describe each search or investigation conducted by or on behalf of You in connection with Applicant's Mark or any variation thereof, including, but not limited to, any search of the records of the United States Patent and Trademark Office or of any other records or publications.

Applicant's Response: Subject to and without waiver of objections, Applicant used an attorney for search and registration of Applicant's "M" mark.

Opposer's Response: Applicant's response is incomplete because it does not describe Applicant's search. Specifically, Applicant does not describe how the search was conducted, when it was conducted, and the results of the search. Applicant's objection on the grounds of privilege does not exempt Applicant from describing the facts and results of Applicant's search. Even when a search or investigation is conducted by an attorney, the results of the search or investigation, as well as any other facts related to the search or investigation, are discoverable. Only the comments or opinions of attorneys relating thereto are privileged and not discoverable (unless the privilege is waived). See Axiohm S.A. v. Axiom Tech., Inc., 2000 WL 1720151 (TTAB 2000). Accordingly, Applicant must supplement its response to Interrogatory No. 5 to fully describe Applicant's search.

<u>INTERROGATORY NO. 6:</u> Describe the process by which You selected and adopted Applicant's Mark including, but not limited to, the steps You took to determine You could use and register the mark, the reasons for why You selected or adopted that mark, how the mark was first used in commerce including the goods and services, and the dates of first use for each good or service.

<u>Applicant's response:</u> Subject to and without waiver of objections, Applicant relied on an attorney in determining he could use and register the mark. The mark was first used in commerce in May 2005 on Applicant's online monster fish forum.



Opposer's Response: Applicant's response is incomplete. Applicant's response fails to describe the reasons for why You selected or adopted that mark, how the mark was first used in commerce including the good and services, and the dates of first use for each good or service. Accordingly, under Fed. R. Civ. P. 37(a)(4), Applicant's incomplete response "must be treated as a failure to disclose, answer, or respond." Applicant must respond with a complete answer.

INTERROGATORY NO. 7: For each product listed in Applicant's Application, describe the circumstances surrounding the first sale of that product, including the date when You first sold that product, the person or entity that you contend sold the product, the person or entity that you contend purchased the product, the retail prices charged for the product, and the person(s) most knowledgeable about those sales.

<u>Applicant's Response to Interrogatory No. 7</u>: Subject to and without waiver of objections, Applicant began selling t-shirts bearing the 'MONSTERFISHKEEPERS' mark in 2010 via Applicant's online monsterfish forum. The price of a t-shirt was fifteen dollars, (\$15), including shipping and handling. Applicant is most knowledgeable about the initial sale of the t-shirt."

Opposer's Response: Applicant's response is incomplete and must be promptly supplemented. Applicant's response fails to identify the month or day that the first sale took place in 2010 or the person or entity Applicant contends purchased the t-shirt. Furthermore, Applicant's response does not describe the circumstances surrounding the first sale of baseball caps, hats, golf caps, hooded sweat shirts, knitted caps, Long-sleeved shirts, sports caps and hats, or sweaters. Additionally, Applicant's response fails to identify the retail price, which excludes shipping and handling, charged for each product. Under Fed. R. Civ. P. 37(a)(4), Applicant's incomplete response "must be treated as a failure to disclose, answer, or respond." Accordingly, Opposer must supplement its answer to this Interrogatory to provide this omitted information.

INTERROGATORY NO. 8: For any uses of the mark not identified in response to Interrogatory No.7, identify the dates of that use and describe that use including describing the circumstances surrounding the first use of the marks in that manner by You, and identifying all documents evidencing the first use of the marks in that manner and all persons knowledgeable about that use.

<u>Applicant's Response to Interrogatory No. 8:</u> Subject to and without waiver of objections, Applicant responds as follows: see Response to Interrogatory No. 7.

Opposer's Response: Applicant's response is non-responsive to the Interrogatory. The information requested in Interrogatory specifically excludes information requested in Interrogatory No. 8. Applicant has an obligation to produce this information, and must provide a complete response to Interrogatory No. 8.

INTERROGATORY NO. 9: Describe each way Applicant's Mark is or will be used in connection with each good and/or service identified in response to Interrogatory Nos. 7 and 8, including, but not limited to, the size, placement, and coloring of the mark.

Applicant's Response to Interrogatory No. 9: Subject to and without waiver of objections, Applicant responds as follows: The "M" mark is used on t-shirts, decals and key chains. Approximately 99% of the aforementioned goods bear the "M" mark in white and/or black ink on a red, pink, or black t-shirt, decal or key chain.

Opposer's Response: Applicant's response to Interrogatory No. 7 indicated that Applicant has only sold t-shirts bearing Applicant's Mark, which contradicts Applicant's response to Interrogatory No. 9, which indicates that Applicant has also sold decals and keychains, and also contradicts Applicant's admission to Request for Admission No. 6, which indicates that Applicant has used Applicant's mark on baseball caps and hats; Golf caps; Hats; Hooded sweat shirts; Knitted caps; Long-sleeved shirts; Sports caps and hats; Sweaters; T-shirts;



Wearable garments and clothing, namely, shirts." Applicant must amend and/or supplement its responses to Interrogatory Nos. 7 and 9 and Request for Admission No. 6 to reflect accurate information regarding the goods and/or services bearing Applicant's Mark.

Furthermore, Applicant's response is evasive and uses language such as "approximately" and "99%," which appears to be an effort to avoid disclosing all responsive information. Additionally, the response is incomplete because it does not describe the size and placement of the mark. Accordingly, under Fed. R. Civ. P. 37(a)(4), Applicant's incomplete and evasive response "must be treated as a failure to disclose, answer, or respond." Applicant must respond with a complete answer.

INTERROGATORY NO. 10: Describe in detail the actual or intended demographics of the purchasers for the goods and/or services sold or offered in connection with Applicant's Mark.

Applicant's Response to Interrogatory No. 10: Subject to and without waiver of objections, Applicant responds as follows: The actual and intended demographics of the purchasers for the goods and/or services sold or offered in connection with Applicant's Mark are monsterfish hobbyists and enthusiasts worldwide.

Opposer's Response: Applicant's response is incomplete, because it does not describe in detail the actual or intended demographics as requested in Interrogatory No. 10. Specifically, Applicant's response does not describe the age or gender of monsterfish hobbyists and enthusiasts. Furthermore, Applicant's response is evasive because it only identifies the demographics of actual or intended purchasers for goods and/or services bearing Applicant's Mark worldwide, when the only relevant purchasing demographic for purposes of this opposition proceeding are U.S. purchasers.

INTERROGATORY NO. 11: Describe in detail the trade channels, including, but not limited to, wholesale and retail channels, through which Applicant provides to consumers and/or plans to provide to consumers the goods and/or services sold or offered in connection with Applicant's Mark.

<u>Applicant's Response to Interrogatory No. 11:</u> Subject to and without waiver of objections, Applicant responds as follows: Applicant sells goods/services bearing Applicant's Mark through Applicant's online monsterfish forum. Furthermore, Applicant disburses t-shirts to monsterfish enthusiasts free of charge at various fish expositions and other monsterfish events.

Opposer's Response: Applicant's response is evasive and uses language such as "various" and "other monsterfish events." Accordingly, under Fed. R. Civ. P. 37(a)(4), Applicant's evasive and incomplete response "must be treated as a failure to disclose, answer, or respond." Applicant must respond with a complete answer.

INTERROGATORY NO. 13: Identify all past or present customers (including, for example, retail, Internet, mail order, and/or wholesale) of the goods and/or services sold or offered in connection with Applicant's Mark.

<u>Applicant's Response to Interrogatory No. 13:</u> Subject to and without wavier of objections, Applicant responds as follows: All past or present customers of the goods and/or services sold or offered in connection with Applicant's mark purchase Applicant's goods/services through Applicant's online monsterfish forums.

Opposer's Response: Applicant's response to Interrogatory No. 13 is nonresponsive because it does not identify all past or present customers. Additionally, Applicant's response to Interrogatory No. 13 contradicts Applicant's response to Interrogatories 11 and 21, where Applicant indicates that it provides goods bearing Applicant's mark to attendees of expositions, attendees of "other monsterfish events," and to members of a child's jujitsu team. Accordingly, Applicant must amend and/or supplement its response to Interrogatory No. 13 to provide a responsive response and must amend and/or supplement its responses to Interrogatory Nos. 11, 13, and 21 to resolve Applicant's contradictions.



INTERROGATORY NO. 14: Separately for each good and/or service sold or offered in connection with Applicant's Mark, state the total sales (in units and dollars) on a monthly basis from the date of first sale to the present.

Opposer's Response: Applicant only responded to Interrogatory No. 14 with meritless objections. First, Applicant objected on the grounds that Interrogatory No. 14 allegedly contains discrete subparts. "A single question asking for several bits of information relating to the same topic counts as one interrogatory." *Hasan v. Johnson*, 2012 WL 569370, *4-5 (E.D.Cal. Feb. 21, 2012) (internal citations and quotations omitted). Interrogatory No. 14 only asks for bits of information relating to the total sales of goods and/or services sold or offered in connection with Applicant's Mark, and accordingly only counts as one interrogatory.

Second, Applicant's objection on the grounds that Interrogatory No. 14 is vague and ambiguous is also meritless. The interrogatory uses clear, commonly-used terms, and Applicant has not explained why the interrogatory is vague and/or ambiguous.

Finally, Applicant's objection on the grounds of privilege is also meritless. Sales information is not protected from disclosure by the attorney-client privilege, the work product privilege, or any other privilege or immunity.

Accordingly, Applicant must provide a complete response to Interrogatory No. 14.

INTERROGATORY NO. 15: For each product or service sold or offered in connection with Applicant's Mark, state the average wholesale and retail price or intended average wholesale and retail price.

Opposer's Response: Applicant only provided meritless objections in response to Interrogatory No. 15. First, Applicant objected on the grounds that Interrogatory No. 15 allegedly contains discrete subparts. "A single question asking for several bits of information relating to the same topic counts as one interrogatory." Hasan v. Johnson, 2012 WL 569370, *4-5 (E.D.Cal. Feb. 21, 2012) (internal citations and quotations omitted). Interrogatory No. 15 only asks for bits of information relating to the wholesale and retail prices of goods and/or services sold or offered in connection with Applicant's Mark, and accordingly only counts as one interrogatory.

Second, Applicant's objection on the grounds that Interrogatory No. 15 is vague and ambiguous is also meritless. The interrogatory uses clear, commonly-used terms, and Applicant has not explained why the interrogatory is vague and/or ambiguous.

Finally, Applicant's objection on the grounds of privilege is also meritless. Wholesale and retail price information is not protected from disclosure by the attorney-client privilege, the work product privilege, or any other privilege or immunity.

Accordingly, Applicant must provide a complete response to Interrogatory No. 15.

INTERROGATORY NO. 16: Describe in detail all manners in which the goods and/or services sold or offered in connection with Applicant's Mark have been advertised or promoted and/or plan to be advertised or promoted.

<u>Applicant's Response to Interrogatory No. 16:</u> Subject to and without waiver of objections, Applicant responds as follows: Applicant advertises goods and/or services in connection with Applicant's Mark in various fish-trade magazines, at monsterfish trade shows, online through Applicant's monsterfish forum and through various fish-related websites.

Opposer's Response: Applicant's response fails to describe in detail all manners in which the goods and/or services sold or offered in connection with Applicant's Mark plan to be advertised or promoted. For example, Applicant's response to Interrogatory 21 indicates that Applicant also promotes its "MONSTERFISHKEEPERS"



mark by providing decals to a jujitsu team. Applicant must amend and/or supplement Applicant's responses to Interrogatory Nos. 17 and/or 21 to provide complete and accurate responses.

<u>INTERROGATORY NO. 18:</u> Describe in detail the circumstances surrounding Applicant's awareness of Opposer's Marks, including, but not limited to, how and when Applicant first became aware of Opposer's Marks.

<u>Applicant's Response to Interrogatory No. 18:</u> Subject to and without waiver of objections, Applicant responds as follows: Applicant encountered Opposer's Mark, after Applicant's Mark was being used in commerce, in an advertisement at a rest stop.

Opposer's Response: Applicant's response fails to describe in detail the circumstances surrounding Applicant's awareness of Opposer's Marks. Applicant's response only identifies some of the circumstances surrounding the awareness of one of Opposer's Marks, and does not identify which of Opposer's Marks his response discusses. Additionally, Applicant's response does not identify the date when Applicant first became aware of that mark, the rest stop the mark was encountered at, or what Applicant means when he states he "encountered" Opposer's Mark. Furthermore, Applicant's response does not describe the circumstances surrounding the other of Opposer's Marks. Applicant's failure to provide a complete response "must be treated as a failure to disclose, answer, or respond." Applicant must respond with a complete answer.

<u>INTERROGATORY NO. 20:</u> Describe any instances of an inquiry or comment regarding an association between Applicant's Goods on the one hand, and Opposer's products bearing Opposer's Marks on the other hand, including, but not limited to, identifying all persons having knowledge thereof and all documents relating thereto.

<u>Applicant's Response to Interrogatory No. 20:</u> Subject to and without waiver of objections, Applicant responds as follows: Applicant recalls no instances as listed in Interrogatory No. 20.

Opposer's Response: Applicant cannot merely rely on recollection to respond to Opposer's Interrogatory. Applicant "has a duty to thoroughly search its records for all information properly sought in the request, and to provide such information to the requesting party within the time allowed for responding to the request." TBMP § 408.02. Furthermore, Applicant's response to Request for Production No. 51 contradicts Applicant's response to Interrogatory No. 20, because it identifies documents referring or relating to inquiries or comments regarding an association between Applicant's Goods on the one hand, and Opposer's products bearing Opposer's Marks on the other hand. Applicant must immediately conduct a thorough search of Applicant's records to provide a complete answer to Interrogatory No. 20, and must amend and/or supplement Applicant's responses to Interrogatory No. 20 and/or Request for Production No. 51 to resolve this contradiction.

INTERROGATORY NO. 20: Describe in detail the circumstances surrounding Applicant's selection and use of the wording "UNLEASH YOUR INNER MONSTER", including the first use of that wording.

<u>Applicant's Response to Interrogatory No. 20:</u> Subject to and without waiver of objections, Applicant responds as follows: Applicant used the phrase "UNLEASH YOUR INNER MONSTER" in association with Applicant's Mark beginning in 2007-08 to celebrate the third birthday of Applicant's company Monsterfishkeepers.

Opposer's Response: Applicant's response is evasive and states a first use date of "2007-08" which could be read as either sometime in 2007 or 2008, or as August 2007. Applicant must clarify the date it first used the wording "UNLEASH YOUR INNER MONSTER."

Additionally, the response is incomplete because it does not describe the circumstances surrounding how Applicant selected, created, conceived, and used the wording "UNLEASH YOUR INNER MONSTER" in connection with Applicant's Mark. Accordingly, under Fed. R. Civ. P. 37(a)(4), Applicant's response "must be treated as a failure to disclose, answer, or respond." Applicant must respond with a complete answer.



INTERROGATORY NOS. 21, 22, and 23:

Interrogatory No. 21: Describe the factual bases supporting Applicant's allegation in paragraph 1 of Applicant's Affirmative Defenses that "Opposer has failed to state a claim upon which relief can be granted."

Interrogatory No. 22: Describe the factual bases supporting Applicant's allegation in paragraph 2 of Applicant's Affirmative Defenses that "[t]here is no likelihood of confusion between the marks of Opposer and Applicant under §2(d) of the Lanham Act."

Interrogatory No. 23: Describe the factual bases supporting Applicant's allegation in paragraph 3 of Applicant's Affirmative Defenses that "[t]here is no dilution, either by blurring or tarnishment, of Opposer's Marks by Applicants mark under Lanham Act §43(c)."

Opposer's Response: Applicant only provided meritless objections in response to Interrogatory Nos 21, 22, and 23. First, Opposer's request merely requests the facts supporting Applicant's affirmative defenses. The information that Opposer seeks is discoverable under the discovery standard, which permits parties to obtain discovery on information that is relevant to any party's claim or defense. See Johnson & Johnson v. Rexall Drug Co., 186 USPQ 167, 171 (TTAB 1975) (party is entitled to take discovery to determine whether grounds exist for any affirmative defenses or counterclaims); and Neville Chemical Co. v. Lubrizol Corp., 183 USPQ 184, 187 (TTAB 1974) ("applicant is entitled to take discovery not only as to the matters specifically raised in the pleadings but also as to any matters which might serve as the basis for an affirmative defense or for a counterclaim."). Moreover, even if such request sought a legal conclusion (which it plainly does not), Opposer refers Applicant to the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), which indicates that "request for discovery is not necessarily objectionable merely because it requires a party or a witness to give an opinion or contention that relates to fact or the application of law to fact." TBMP § 414(21).

In addition, Applicant's own interrogatories similarly seek the factual bases supporting Opposer's allegations in Opposer's Notice of Opposition. Because the signature of a party or its attorney to a request for discovery constitutes, under the provisions of Fed. R. Civ. P. 26(g), a certificate by the party or its attorney that, inter alia, the request is warranted, Applicant has already admitted that such interrogatories are appropriate and not objectionable. Accordingly, Applicant must immediately provide Applicant's responses to Interrogatories Nos. 21, 22, and 23.

INTERROGATORY NO. 24: Describe in detail the circumstances surrounding Applicant's selection and use of the wording "UNLEASH YOUR INNER MONSTER", including the first use of that wording.

Applicant's Response to Interrogatory No. 24: Subject to and without waiver of objections, Applicant responds as follows: Applicant used the phrase "UNLEASH YOUR INNER MONSTER" in association with Applicant's Mark beginning in 2007-08 to celebrate the third birthday of Applicant's company Monsterfishkeepers.

Opposer's Response: Applicant's response is evasive and states a first use date of "2007-08" which could be read as either sometime in 2007 or 2008, or as August 2007. Applicant must clarify the date it first used the wording "UNLEASH YOUR INNER MONSTER."

Additionally, the response is incomplete because it does not describe the circumstances surrounding how Applicant selected, created, conceived, and used the wording "UNLEASH YOUR INNER MONSTER" in connection with Applicant's Mark. Accordingly, under Fed. R. Civ. P. 37(a)(4), Applicant's response "must be treated as a failure to disclose, answer, or respond." Applicant must respond with a complete answer.



INTERROGATORY NO. 25: Describe in detail the circumstances surrounding Applicant's selection and use of



the design

, including the first use of that design.

<u>Applicant's Response to Interrogatory No. 25</u>: Subject to and without waiver of objections, Applicant responds as follows: Applicant created the patch shown in Interrogatory No. 25 approximately three months ago to give to his child's jujitsu team for inspiration at children's jujitsu competitions.

Opposer's Response: Applicant must clarify the date it first used the design . Additionally, the response is incomplete because it does not describe the circumstances surrounding how Applicant selected, created,

conceived, or uses the design . Accordingly, under Fed. R. Civ. P. 37(a)(4), Applicant's response "must be treated as a failure to disclose, answer, or respond." Applicant must respond with a complete answer, including

stating how and why Applicant selected the colors used or the design , and describing <u>all</u> uses of the design

INTERROGATORY NO. 28: Identify all documents referenced or relied upon in preparing Applicant's responses to these Interrogatories.

<u>Applicant's Response to Interrogatory No. 28:</u> Subject to and without waiver of objections, Applicant responds as follows: Applicant did not reference or rely upon any documents in preparing Applicant's responses to these Interrogatories.

Opposer's Response: Applicant has a duty to "thoroughly search its records for all information properly sought in the request, and to provide such information to the requesting party within the time allowed for responding to the request." TBMP § 408.02. Moreover, a responding party that provides an incomplete response to a discovery request "may not thereafter rely at trial on information from its records which was properly sought in the discovery request but was not included in the response thereto." TBMP § 408.02. Accordingly, please confirm that Applicant has conducted a thorough search of Applicant's records, and did not reference or rely upon any documents in preparing Applicant's responses to these Interrogatories.

C. Opposer's First Set of Document Requests

Requests for Production Nos. 1-5, 10, 15-16, 19-20, 22, 25, 30, 40-41, and 51

Applicant's responses to Requests for Production Nos. 1-5, 6, 10, 15-16, 19-20, 22, 25, 30, 40-41, and 51 contain objections, but also reference exhibits produced by Applicant. Accordingly, it is unclear whether Applicant has withheld any documents based on its objections. Please identify whether Applicant has withheld documents based on its objections to Requests for Production Nos. 1-5, 6, 10, 15-16, 19-20, 22, 25, 30, 40-41, and 51.

Requests for Production Nos. 6, 33, 48, 53, 56, and 58-60

Applicant's objection to Requests for Production Nos. 6, 33, 48, 53, 56, and 58-60 on the grounds that responsive documents are readily available to Opposer is meritless. A document being readily available to a party is not a permissible objection to a request for production. Accordingly, Applicant must produce any documents within its possession, custody or control responsive to Requests for Production Nos. 6, 33, 48, 53, 56, and 58-60.



Requests for Production Nos. 34, 39, 42, 49, and 53

Applicant's objections to Requests for Production Nos. 34, 39, 42, and 53 on the grounds that the requests call for information or documents protected form disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery are meritless. Requests for Production Nos. 34, 39, 42, and 53 do not solely ask for documents or things protected by the work-product privilege or the attorney-client privilege. Indeed, it is common for parties to have non-privileged documents and/or things responsive to these document requests. Accordingly, Applicant's blanket privilege objection to Requests for Production Nos. 34, 39, 42, and 53 are without merit and Applicant must produce non-privileged documents responsive to Requests for Production Nos. 34, 39, 42, and 53.

Requests for Production Nos. 8, 9, and 12

Applicant's responses to Requests for Production Nos. 8, 9, and 12 state that Applicant has no documents or things responsive to these requests. However, this directly contradicts Applicant's statements in its Interrogatories. Applicant has, at a minimum, referenced documents relating to goods sold by Applicant. Furthermore, Applicant stated in its Initial Disclosures that Applicant possesses "[d]ocuments reflecting Applicant's creation and first use of its mark" as well as "[d]ocuments reflecting Applicant's goods and services." Accordingly, Opposer must do a thorough search and produce all documents and things responsive to Requests for Production Nos. 8, 9, and 12.

Request for Production No. 13

Applicant objected to Request for Production Nos. 13 on the ground that the request is vague and ambiguous with respect to the phrases "first use," "intended use," and "any and all goods and/or services." Each of these phrases is commonly used, is not vague or ambiguous. Indeed, Applicant understands these phrases, as evidenced by the fact that Applicant uses these phrases to identify documents in its possession in its Initial Disclosures and the fact that Applicant has not objected to these terms in any other Discovery Requests. Additionally, these terms are defined by the TMEP.

Applicant did not identify any documents responsive to this request. However, Applicant stated in its Initial Disclosures that Applicant possesses "[d]ocuments reflecting Applicant's creation and first use of its mark" as well as "[d]ocuments reflecting Applicant's goods and services." Accordingly, Applicant must provide all documents responsive to Request for Production No. 13.

Request for Production No.27

Applicant's response to Interrogatory No. 16 states that Applicant has spent approximately one hundred thousand dollars or more on advertising and promotion of Applicant's Mark since 2005. However, Applicant did not identify any documents responsive to this request. Please confirm Applicant has no documents responsive to this Document Request.

Request for Production No. 35

Applicant's response to Request for Production No. 35 is nonresponsive. Request for Production No. 35 is not an interrogatory but a request for production seeking "all documents and things referring or relating to any lawsuits, proceedings, or other formal legal proceedings to which Applicant was a party that were based on, concerned, or involved Applicant's Mark." Applicant must provide all documents and things responsive to Request for Production No. 35.

Request for Production No.40

Request for Production No. 40 requested all documents and things referring or relating to "pricing for the goods and/or services offered under Applicant's Mark." In response, Applicant pointed to the website www.monsterfishkeepers.com. However, no pricing information is present on the webpage www.monsterfishkeepers.com. To the extent any documents or things responsive to Request for Production No. 40 exist, Applicant must produce these documents.



Request for Production No.41

In Request for Production No. 41, Opposer requested all documents and things referring or relating to "Applicant's total sales (in units and dollars) of each product or service sold under Applicant's Mark on a monthly basis from the date of first sale to the present." In response, Applicant's response points to Exhibits M, N, and O. Exhibits M, N, and O appear to show PayPal transactions from January 9, 2009 through April 4, 2013. However, the Document Request does not request documents concerning the total sales made by Applicant. Instead, it requests the total sales of goods and/or services sold or offered in connection with Applicant's Mark broken down separately by product and by month, from the date of first sale to present. Exs. M, N, and O fail to address the substance of the Request and are therefore non-responsive. To the extent documents responsive to Request for Production No. 41 exist, Applicant must promptly produce them.

Request for Production No. 51

In Request for Production No. 51, Opposer requested all documents and things referring or relating to "any comments or inquiries from customers or potential customers that Applicant has received relating to Opposer, Opposer's Marks, or Opposer's products." In response, Applicant pointed to the websites www.monsterfishkeepers.com and https://www.facebook.com/MonsterFishKeepers?ref=ts&fref=ts. However, the webpage www.monsterfishkeepers.com does not appear to be responsive to this Document Request. Additionally, MEC does not have access to comments or inquires from customers or potential customers relating to Opposer, Opposer's Marks, or Opposer's product that may have been sent to Applicant's Facebook profile at https://www.facebook.com/MonsterFishKeepers?ref=ts&fref=ts. Furthermore, Applicant must produce any other documents and/or things responsive to this Request, including any emails Applicant has received. Accordingly, Applicant must perform a thorough search of its documents and provide a copy of any emails, specific webpages, or other documents and/or things that show comments or inquiries from customers or potential customers that Applicant has received relating to Opposer, Opposer's Marks, or Opposer's products.

Request for Production No. 55

Applicant's response to Request for Production No.55 states that Applicant "has no documents or things used or referred to in connection with the preparation of Applicant's responses to the Interrogatories served by Opposer in this opposition proceeding."

This statement contradicts Applicant's Interrogatories. Applicant references documents and things, including documents and things protected by the work-product doctrine and attorney-client privilege, in its responses to at least Interrogatory Nos. 3 and 5-27. Accordingly, Applicant must produce all non-privileged documents responsive to Request for Production No. 55.

Request for Production No. 56

In Request for Production No. 56, Opposer requested all documents and things referring or relating to documents and/or things "identified in Your Initial Disclosures." Applicant's Initial Disclosures stated that Applicant had at least four categories of documents in Applicant's possession, custody or control. However, Applicant has not produced any documents responsive to Request for Production No. 56. Applicant must produce all documents responsive to Request for Production No. 56.

Conclusion

Please be aware that the foregoing is not an exhaustive list of all issues raised by Applicant's responses to Opposer's discovery requests. Once Applicant provides supplemental responses and documents, we may identify additional deficiencies.

Please provide full and complete supplementary responses to this letter as soon as possible. We are available to meet and confer on these issues on Monday, May 20 at 10 am PT. Please let me know if this time



resolve this matter without the Board's intervention, if you fail to provide complete and acceptable answers and responsive documents, Opposer will have no choice but to seek assistance from the Board in resolving these issues.

Sincerely,

Brigette B. Chaput

cc: Lynda J. Zadra-Symes

15222583 041513



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> Brigette Chaput Brigette.Chaput@knobbe.com

May 15, 2013

VIA ELECTRONIC MAIL

Ms. Eve Brown Suffolk University Law School 120 Tremont Street Boston, MA 02108 ebrown1@suffolk.edu

Re:

Monster Energy Company v. Li-Wei Chih

Mark: MONSTERFISHKEEPERS

Opposition No.: 91205893

Our Reference No.: HANBEV.1336M

Dear Ms. Brown:

We have reviewed your client's responses to Opposer's First Set of Requests for Admissions, First Set of Interrogatories, Nos. 1-29, and First Set of Requests for Production of Documents and Things, Nos. 1-60. The responses are severely deficient and need to be promptly amended and supplemented.

Pursuant to TBMP § 524, TBMP § 523.02, F.R.C.P. 37 and 37 C.F.R. § 2.120(e), we are writing in an attempt to reach an amicable resolution of these discovery disputes. If Applicant does not adequately address all the issues identified in this letter by <u>May 22, 2013</u>, Opposer will have no alternative but to file motions with the Trademark Trial and Appeal Board (the "Board") to compel complete responses to Opposer's First Set of Interrogatories and First Set of Discovery Requests and to test the sufficiency of Applicant's responses to Opposer's First Set of Requests for Admissions.

A. Opposer's First Set of Requests for Admissions

Request for Admission No. 6

Opposer requested that Applicant "[a]dmit Applicant first used Applicant's Mark on Applicant's Goods in interstate commerce on May 15, 2005." Applicant admitted this Request for Admission, and accordingly represented that the MONSTERFISHKEEPERS mark was placed on "Baseball caps and hats; Golf caps; Hats; Hooded sweat shirts; Knitted caps; Long-sleeved shirts; Sports caps and hats; Sweaters; T-shirts" in interstate commerce on May 15, 2005. However, Applicant's response to Interrogatory No. 7 states that Applicant first began selling t-shirts bearing the MONSTERFISHKEEPERS mark in 2010 via Applicant's online monsterfish forum. These responses are contradictory, as Applicant cannot have first sold t-shirts bearing the MONSTERFISHKEEPERS mark in both 2005 and 2010. Accordingly, Applicant must amend and/or supplement its responses immediately to resolve this contradiction.

B. Opposer's First Set of Interrogatories

INTERROGATORY NO. 1: Identify all persons with knowledgeable about Applicant's selection of Applicant's Mark and summarize the substance of each person's knowledge regarding the selection of Applicant's Mark.

<u>Applicant's Response to Interrogatory No. 1:</u> Subject to and without waiver of objections, Applicant responds as follows: Li-Wei Chih, (Applicant).



Opposer's Response: Applicant's response is incomplete because it does not summarize the substance of each person's knowledge regarding the selection of Applicant's Mark. Accordingly, under Fed. R. Civ. P. 37(a)(4), Applicant's incomplete response "must be treated as a failure to disclose, answer, or respond." Applicant must respond with a complete answer.

INTERROGATORY NO. 3: Describe in detail the circumstances surrounding Applicant's selection of Applicant's Mark, including, but not limited to, describing why and how Applicant's Mark was selected and identifying the dates Applicant's Mark was selected.

Applicant's Response to Interrogatory No. 3: Subject to and without waiver of objections. Applicant was keeping Monsterfish in 2004 and based the idea for his word mark off of a Japanese pictorial book titled "Monsterfishkeepers," which can be viewed at the link below: http://pisces.v.wol.ne.jp/kikan/oth.html.

Opposer's Response: Applicant's response is incomplete because it does not describe in detail the circumstances surrounding Applicant's selection of Applicant's Mark. Namely, Applicant's response does not describe why Applicant's Mark was selected or identify the dates Applicant's Mark was selected. Accordingly, under Fed. R. Civ. P. 37(a)(4), Applicant's incomplete response "must be treated as a failure to disclose, answer, or respond." Applicant must respond with a complete answer.

INTERROGATORY NO. 4: Identify all alternative marks that were considered, but ultimately rejected, by Applicant prior to the adoption of Applicant's Mark.

Opposer's Response: Applicant objected to Interrogatory No. 4 on the grounds that it is "irrelevant."_However, the information requested is relevant to determine the circumstances surrounding Applicant's selection and adoption of its MONSTERFISHKEEPERS mark, which TBMP §414(4) explains is "generally discoverable (particularly of a defendant)." Accordingly, Applicant's relevance objection is without merit, and Applicant must provide a response to Interrogatory No. 4.

INTERROGATORY NO. 5: Describe each search or investigation conducted by or on behalf of You in connection with Applicant's Mark or any variation thereof, including, but not limited to, any search of the records of the United States Patent and Trademark Office or of any other records or publications.

Opposer's Response: Applicant objected to Interrogatory No. 5 on the grounds that this Interrogatory is subject to attorney-client privilege and subject to the work-product doctrine. However, searches and investigations are commonly performed by non-attorneys, and such searches are not protected by the attorney-client privilege or the work product doctrine. Accordingly, Applicant's blanket privilege objection to the Interrogatory is without merit.

Furthermore, even when a search or investigation is conducted by an attorney, the results of the search or investigation, as well as any other facts related to the search or investigation, are discoverable. Only the comments or opinions of attorneys relating thereto are privileged and not discoverable (unless the privilege is waived). See Axiohm S.A. v. Axiom Tech., Inc., 2000 WL 1720151 (TTAB 2000). Accordingly, Applicant must provide a response to Interrogatory No. 5.

INTERROGATORY NO. 6: Describe the process by which You selected and adopted Applicant's Mark including, but not limited to, the steps You took to determine You could use and register the mark, the reasons for why You selected or adopted that mark, how the mark was first used in commerce including the goods and services, and the dates of first use for each good or service.

<u>Opposer's Response:</u> Applicant's response consisted solely of meritless objections. First, Applicant objected on the grounds that the term "reasons" is vague and ambiguous. This objection is without merit. Reason is a commonly used term and is not vague or ambiguous.



Second, Applicant's objection that Interrogatory No. 6 contains discrete subparts is also meritless. "A single question asking for several bits of information relating to the same topic counts as one Interrogatory." Hasan v. Johnson, 2012 WL 569370, *4-5 (E.D. Cal. Feb. 21, 2012). No part of Interrogatory No. 6 does not ask for information relating to the topic of describing the process by which Applicant selected and adopted Applicant's mark. Furtheremore, even if Interrogatory No. 6 is compound, Opposer has not exceeded its permitted 75 interrogatories, and accordingly, Applicant must respond to Interrogatory No. 6.

INTERROGATORY NO. 7: For each product listed in Applicant's Application, describe the circumstances surrounding the first sale of that product, including the date when You first sold that product, the person or entity that you contend sold the product, the person or entity that you contend purchased the product, the retail prices charged for the product, and the person(s) most knowledgeable about those sales.

<u>Applicant's Response to Interrogatory No. 7</u>: Subject to and without waiver of objections, Applicant responds as follows: Applicant began selling t-shirts bearing the 'MONSTERFISHKEEPERS' mark in 2010 via Applicant's online monsterfish forum. The price of a t-shirt was fifteen dollars, (\$15), including shipping and handling. Applicant is most knowledgeable about the initial sale of the t-shirt."

Opposer's Response: Applicant's response is incomplete and must be promptly supplemented. Applicant's response fails to identify the month or day that the first sale took place in 2010 or the person or entity Applicant contends purchased the t-shirt. Furthermore, Applicant's response does not describe the circumstances surrounding the first sale of baseball caps, hats, golf caps, hooded sweat shirts, knitted caps, Long-sleeved shirts, sports caps and hats, or sweaters. Additionally, Applicant's response fails to identify the retail price, which excludes shipping and handling, charged for each product. Under Fed. R. Civ. P. 37(a)(4), Applicant's incomplete response "must be treated as a failure to disclose, answer, or respond." Accordingly, Opposer must supplement its answer to this Interrogatory to provide this omitted information.

INTERROGATORY NO. 8: For any uses of the mark MONSTERFISHKEEPERS not identified in response to Interrogatory No.7, identify the dates of that use and describe that use including describing the circumstances surrounding the first use of the marks in that manner by You, and identifying all documents evidencing the first use of the marks in that manner and all persons knowledgeable about that use.

<u>Applicant's Response to Interrogatory No. 8:</u> Subject to and without waiver of objections, Applicant responds as follows: see Response to Interrogatory No. 7.

Opposer's Response: Applicant's response is non-responsive to the Interrogatory. The information requested in Interrogatory specifically excludes information requested in Interrogatory No. 8. Applicant has an obligation to produce this information, and must provide a complete response to Interrogatory No. 8.

INTERROGATORY NO. 9: Describe each way Applicant's Mark is or will be used in connection with each good and/or service identified in response to Interrogatory Nos. 7 and 8, including, but not limited to, the size, placement, and coloring of the mark.

<u>Applicant's Response to Interrogatory No. 9:</u> Subject to and without waiver of objections, Applicant responds as follows: The "MONSTERFISHKEEPERS" mark is used on t-shirts, decals and key chains. Approximately 99% of the aforementioned goods bear the "MONSTERFISHKEEPERS" mark in white and/or black ink on a red, pink, or black t-shirt, decal or key chain.

Opposer's Response: Applicant's response to Interrogatory No. 7 indicated that Applicant has only sold t-shirts bearing Applicant's Mark, which contradicts Applicant's response to Interrogatory No. 9, which indicates that Applicant has also sold decals and keychains, and also contradicts Applicant's admission to Request for Admission No. 6, which indicates that Applicant has used Applicant's mark on baseball caps and hats; Golf caps;



Hats; Hooded sweat shirts; Knitted caps; Long-sleeved shirts; Sports caps and hats; Sweaters; T-shirts." Applicant must amend and/or supplement its responses to Interrogatory Nos. 7 and 9 and Request for Admission No. 6 to reflect accurate information regarding the goods and/or services bearing Applicant's Mark.

Furthermore, Applicant's response is evasive and uses language such as "approximately" and "99%," which appears to be an effort to avoid disclosing all responsive information. Additionally, the response is incomplete because it does not describe the size and placement of the mark. Accordingly, under Fed. R. Civ. P. 37(a)(4), Applicant's incomplete and evasive response "must be treated as a failure to disclose, answer, or respond." Applicant must respond with a complete answer.

INTERROGATORY NO. 10: Describe in detail the actual or intended demographics of the purchasers for the goods and/or services sold or offered in connection with Applicant's Mark.

Applicant's Response to Interrogatory No. 10: Subject to and without waiver of objections, Applicant responds as follows: The actual and intended demographics of the purchasers for the goods and/or services sold or offered in connection with Applicant's Mark are monsterfish hobbyists and enthusiasts worldwide.

Opposer's Response: Applicant's response is incomplete, because it does not describe in detail the actual or intended demographics as requested in Interrogatory No. 10. Specifically, Applicant's response does not describe the age or gender of monsterfish hobbyists and enthusiasts. Furthermore, Applicant's response is evasive because it only identifies the demographics of actual or intended purchasers for goods and/or services bearing Applicant's Mark worldwide, when the only relevant purchasing demographic for purposes of this opposition proceeding are U.S. purchasers.

<u>INTERROGATORY NO. 11:</u> Describe in detail the trade channels, including, but not limited to, wholesale and retail channels, through which Applicant provides to consumers and/or plans to provide to consumers the goods and/or services sold or offered in connection with Applicant's Mark.

<u>Applicant's Response to Interrogatory No. 11:</u> Subject to and without waiver of objections, Applicant responds as follows: Applicant sells goods/services bearing Applicant's Mark through Applicant's online monsterfish forum. Furthermore, Applicant disburses t-shirts to monsterfish enthusiasts free of charge at various fish expositions and other monsterfish events.

Opposer's Response: Applicant's response is evasive and uses language such as "various" and "other monsterfish events." Accordingly, under Fed. R. Civ. P. 37(a)(4), Applicant's evasive and incomplete response "must be treated as a failure to disclose, answer, or respond." Applicant must respond with a complete answer.

INTERROGATORY NO. 13: Identify all past or present customers (including, for example, retail, Internet, mail order, and/or wholesale) of the goods and/or services sold or offered in connection with Applicant's Mark.

<u>Applicant's Response to Interrogatory No. 13:</u> Subject to and without wavier of objections, Applicant responds as follows: All past or present customers of the goods and/or services sold or offered in connection with Applicant's mark purchase Applicant's goods/services through Applicant's online monsterfish forums.

Opposer's Response: Applicant's response to Interrogatory No. 13 is nonresponsive because it does not identify all past or present customers. Additionally, Applicant's response to Interrogatory No. 13 contradicts Applicant's response to Interrogatories 11 and 21, where Applicant indicates that it provides goods bearing Applicant's mark to attendees of expositions, attendees of "other monsterfish events," and to members of a child's jujitsu team. Accordingly, Applicant must amend and/or supplement its response to Interrogatory No. 13 to provide a responsive response and must amend and/or supplement its responses to Interrogatory Nos. 11, 13, and 21 to resolve Applicant's contradictions.



INTERROGATORY NO. 14: Separately for each good and/or service sold or offered in connection with Applicant's Mark, state the total sales (in units and dollars) on a monthly basis from the date of first sale to the present.

Applicant's Response to Interrogatory No. 14: Subject to and without waiver of objections, Applicant responds as follows: Please see Applicant's Response to Request for Production No. 30.

Request for Production No. 30: All documents and things referring or relating to Applicant's total sales of each product sold under Applicant's Mark for each year since the date of first use.

Applicant's Response to Request for Production No. 30: Subject to and without waiver of objections, Applicant responds as follows: Please see "Exhibit M," "Exhibit N," and "Exhibit O."

Opposer's Response: Exhibits M, N, and O appear to show PayPal transactions from January 9, 2009 through April 4, 2013. However, Applicant's response to Interrogatory No. 7 indicated that Applicant has only sold t-shirt products bearing Applicant's Mark, and that Applicant first sold a t-shirt bearing Applicant's Mark in 2010. If Applicant's response to Interrogatory No. 7 is correct, then Exhibits M, N, and O include sales of products not bearing Applicant's Mark, because these exhibits contain sales prior to 2010.

Furthermore, Interrogatory No. 14 requests the total sales of goods and/or services sold or offered in connection with Applicant's Mark broken down separately by product and by month, from the date of first sale to present. Exhibits M, N, and O fail to identify the total sales of goods and/or services by product and month from the date of first sale to present. Additionally, there is no information in Exs. M, N, and O which would identify the products sold, identify whether those products bore Applicant's Mark, or identify the sales amount exclusive of taxes, shipping and handling fees, and other fees not included in the cost of Applicant's products. Accordingly, Applicant's response is incomplete and must be treated as a failure to respond. Applicant must supplement its response to provide a complete response to Interrogatory No. 14.

INTERROGATORY NO. 15: For each product or service sold or offered in connection with Applicant's Mark, state the average wholesale and retail price or intended average wholesale and retail price.

Applicant's Response to Interrogatory No. 15: Subject to and without waiver of objections, Applicant responds as follows: Please see Applicant's Response to Request for Production No. 30.

Applicant's Response to Request for Production No. 30: Subject to and without waiver of objections, Applicant responds as follows: Please see "Exhibit M," "Exhibit N," and "Exhibit O."

Opposer's Response: Exs. M, N, and O fail to provide any wholesale and retail price for any product sold or offered in connection with Applicant's Mark, or any intended average wholesale and retail price for any product sold or offered in connection with Applicant's Mark. Accordingly, Exs. M, N, and O fail to respond to Interrogatory No. 15. Applicant must provide a complete response to Interrogatory No. 15.

INTERROGATORY NO. 17: Describe in detail all manners in which the goods and/or services sold or offered in connection with Applicant's Mark have been advertised or promoted and/or plan to be advertised or promoted.

<u>Applicant's Response to Interrogatory No. 17:</u> Subject to and without waiver of objections, Applicant responds as follows: Applicant advertises goods and/or services in connection with Applicant's Mark in various fish-trade magazines, at monsterfish trade shows, online through Applicant's monsterfish forum and through various fish-related websites.

Opposer's Response: Applicant's response fails to describe in detail all manners in which the goods and/or services sold or offered in connection with Applicant's Mark plan to be advertised or promoted. For example,



Applicant's response to Interrogatory 21 indicates that Applicant also promotes its "MONSTERFISHKEEPERS" mark by providing decals to a jujitsu team. Applicant must amend and/or supplement Applicant's responses to Interrogatory Nos. 17 and/or 21 to provide complete and accurate responses.

INTERROGATORY NO. 18: Describe in detail the circumstances surrounding Applicant's awareness of Opposer's Marks, including, but not limited to, how and when Applicant first became aware of Opposer's Marks.

<u>Applicant's Response to Interrogatory No. 18:</u> Subject to and without waiver of objections, Applicant responds as follows: Applicant encountered Opposer's Mark, after Applicant's Mark was being used in commerce, in an advertisement at a rest stop.

Opposer's Response: Applicant's response fails to describe in detail the circumstances surrounding Applicant's awareness of Opposer's Marks. Applicant's response only identifies some of the circumstances surrounding the awareness of one of Opposer's Marks, and does not identify which of Opposer's Marks his response discusses. Additionally, Applicant's response does not identify the date when Applicant first became aware of that mark, the rest stop the mark was encountered at, or what Applicant means when he states he "encountered" Opposer's Mark. Furthermore, Applicant's response does not describe the circumstances surrounding the other of Opposer's Marks. Applicant's failure to provide a complete response "must be treated as a failure to disclose, answer, or respond." Applicant must respond with a complete answer.

INTERROGATORY NO. 19: Describe each search or investigation conducted by or on behalf of You in connection with, or concerning, Opposer's Marks or any variation thereof, including, but not limited to, any search of the records of the United States Patent and Trademark Office or of any other records or publications.

Applicant's Response to Interrogatory No. 19: Applicant's response consisted solely of meritless objections. First, Applicant responded by objecting on the grounds of ambiguity, but failed to specify to what portion of the requests the objections apply in violation of TBMP § 406.04(b).

Second, Applicant's objection that Interrogatory No. 19 contains discrete subparts is meritless. "A single question asking for several bits of information relating to the same topic counts as one interrogatory." *Hasan v. Johnson*, 2012 WL 569370, *4-5 (E.D.Cal. Feb. 21, 2012) (internal citations and quotations omitted). Interrogatory No. 9 only asks for bits of information relating to "each search or investigation conducted by or on behalf of You in connection with, or concerning, Opposer's Marks or any variation thereof."

Finally, Applicant's objection on the grounds of work product and attorney client privilege is meritless. Searches and investigations are commonly performed by non-attorneys, and such searches are not protected by the attorney-client privilege or the work product doctrine. Accordingly, Applicant's blanket privilege objection to the Interrogatory is without merit.

Furthermore, even when a search or investigation is conducted by an attorney, the results of the search or investigation, as well as any other facts related to the search or investigation, are discoverable. Only the comments or opinions of attorneys relating thereto are privileged and not discoverable (unless the privilege is waived). See Axiohm S.A. v. Axiom Tech., Inc., 2000 WL 1720151 (TTAB 2000). Accordingly, Applicant must provide a response to Interrogatory No. 5.

Accordingly, Applicant must provide a response to Interrogatory No. 19.

INTERROGATORY NO. 20: Describe in detail the circumstances surrounding Applicant's selection and use of the wording "UNLEASH YOUR INNER MONSTER", including the first use of that wording.



Applicant's Response to Interrogatory No. 20: Subject to and without waiver of objections, Applicant responds as follows: Applicant used the phrase "UNLEASH YOUR INNER MONSTER" in association with Applicant's Mark beginning in 2007-08 to celebrate the third birthday of Applicant's company Monsterfishkeepers.

Opposer's Response: Applicant's response is evasive and states a first use date of "2007-08" which could be read as either sometime in 2007 or 2008, or as August 2007. Applicant must clarify the date it first used the wording "UNLEASH YOUR INNER MONSTER."

Additionally, the response is incomplete because it does not describe the circumstances surrounding how Applicant selected, created, conceived, and used the wording "UNLEASH YOUR INNER MONSTER" in connection with Applicant's Mark. Accordingly, under Fed. R. Civ. P. 37(a)(4), Applicant's response "must be treated as a failure to disclose, answer, or respond." Applicant must respond with a complete answer.

INTERROGATORY NO. 21:

Describe in detail the circumstances surrounding Applicant's selection and use of the design



, including the first use of that design.

<u>Applicant's Response to Interrogatory No. 21:</u> Subject to and without waiver of objections, Applicant responds as follows: Applicant created the patch shown in Interrogatory No. 25 approximately three months ago to give to his child's jujitsu team for inspiration at children's jujitsu competitions.

Opposer's Response: Applicant must clarify the date it first used the design . Additionally, the response is incomplete because it does not describe the circumstances surrounding how Applicant selected, created,

conceived, or uses the design . Accordingly, under Fed. R. Civ. P. 37(a)(4), Applicant's response "must be treated as a failure to disclose, answer, or respond." Applicant must respond with a complete answer, including

stating how and why Applicant selected the colors used or the design , and describing <u>all</u> uses of the design

INTERROGATORY NO. 22: Describe in detail, all uses by You of an "M" design in connection with Applicant's Mark, including, but not limited to, the size, placement, and coloring of the design.

<u>Applicant's Response to Interrogatory No. 22:</u> Subject to and without waiver of objections, Applicant responds as follows: Applicant directs Opposer's attention to "Applicant's Response to Opposer's First Set of Interrogatories Nos. 1-28" for Applicant's "M" Mark, Opposition No: 91205924.

Opposer's Response: Applicant's response is non-responsive. The document referred to in Applicant's response is a document subject to a Protective Order in a separate procedure. Therefore, it is improper to reference it in this Proceeding. Accordingly, Opposer must provide a response to Interrogatory No. 22.

<u>INTERROGATORY NO. 23:</u> Describe any instances of an inquiry or comment regarding an association between Applicant's Goods on the one hand, and Opposer's products bearing Opposer's Marks on the other hand, including, but not limited to, identifying all persons having knowledge thereof and all documents relating thereto.



<u>Applicant's Response to Interrogatory No. 23:</u> Subject to and without waiver of objections, Applicant responds as follows: Applicant recalls no instances as listed in Interrogatory No. 23.

Opposer's Response: Applicant cannot merely rely on recollection to respond to Opposer's Interrogatory. Applicant "has a duty to thoroughly search its records for all information properly sought in the request, and to provide such information to the requesting party within the time allowed for responding to the request." TBMP § 408.02. Furthermore, Applicant's response to Request for Production No.51 contradicts Applicant's response to Interrogatory No. 23, because it identifies documents referring or relating to inquiries or comments regarding an association between Applicant's Goods on the one hand, and Opposer's products bearing Opposer's Marks on the other hand. Applicant must immediately conduct a thorough search of Applicant's records toprovide a complete answer to Interrogatory No. 23, and must amend and/or supplement Applicant's responses to Interrogatory No. 23 and/or Request for Production No. 51 to resolve this contradiction.

INTERROGATORY NOS. 24, 25, and 26;

Interrogatory No. 24: Describe the factual bases supporting Applicant's allegation in paragraph 1 of Applicant's Affirmative Defenses that "Opposer has failed to state a claim upon which relief can be granted."

Interrogatory No. 25: Describe the factual bases supporting Applicant's allegation in paragraph 2 of Applicant's Affirmative Defenses that "[t]here is no likelihood of confusion between the marks of Opposer and Applicant under §2(d) of the Lanham Act."

Interrogatory No. 26: Describe the factual bases supporting Applicant's allegation in paragraph 3 of Applicant's Affirmative Defenses that "[t]here is no dilution, either by blurring or tarnishment, of Opposer's Marks by Applicants mark under Lanham Act §43(c)."

Opposer's Response: Applicant only provided meritless objections in response to Interrogatory Nos. 24, 25, and 26. First, Opposer's request merely requests the facts supporting Applicant's affirmative defenses. The information that Opposer seeks is discoverable under the discovery standard, which permits parties to obtain discovery on information that is relevant to any party's claim or defense. See Johnson & Johnson v. Rexall Drug Co., 186 USPQ 167, 171 (TTAB 1975) (party is entitled to take discovery to determine whether grounds exist for any affirmative defenses or counterclaims); and Neville Chemical Co. v. Lubrizol Corp., 183 USPQ 184, 187 (TTAB 1974) ("applicant is entitled to take discovery not only as to the matters specifically raised in the pleadings but also as to any matters which might serve as the basis for an affirmative defense or for a counterclaim."). Moreover, even if such request sought a legal conclusion (which it plainly does not), Opposer refers Applicant to the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), which indicates that "request for discovery is not necessarily objectionable merely because it requires a party or a witness to give an opinion or contention that relates to fact or the application of law to fact." TBMP § 414(21).

In addition, Applicant's own interrogatories similarly seek the factual bases supporting Opposer's allegations in Opposer's Notice of Opposition. Because the signature of a party or its attorney to a request for discovery constitutes, under the provisions of Fed. R. Civ. P. 26(g), a certificate by the party or its attorney that, inter alia, the request is warranted, Applicant has already admitted that such interrogatories are appropriate and not objectionable. Accordingly, Applicant must immediately amend Applicant's responses.

INTERROGATORY NO. 29 Identify all documents referenced or relied upon in preparing Applicant's responses to these Interrogatories.

<u>Applicant's Response to Interrogatory No. 29:</u> Subject to and without waiver of objections, Applicant responds as follows: Applicant did not reference or rely upon any documents in preparing Applicant's responses to these Interrogatories.



Opposer's Response: Applicant's responses to at least Interrogatories Nos. 14 and 15 reference documents, and contradicts Applicant's response to Interrogatory No. 29. Additionally, Applicant has a duty to "thoroughly search its records for all information properly sought in the request, and to provide such information to the requesting party within the time allowed for responding to the request." TBMP § 408.02. Moreover, a responding party that provides an incomplete response to a discovery request "may not thereafter rely at trial on information from its records which was properly sought in the discovery request but was not included in the response thereto." TBMP § 408.02. Accordingly, Applicant must amend and/or supplement Applicant's responses to Interrogatories Nos. 14, 15, and/or 29, and confirm that it has conducted a thorough search of Applicant's records.

C. Opposer's First Set of Document Requests

Requests for Production Nos. 1-5, 10, 15-16, 19-20, 22, 25, 30, 40-41, and 51

Applicant's responses to Requests for Production Nos. 1-5, 6, 10, 15-16, 19-20, 22, 25, 30, 40-41, and 51 contain objections, but also reference exhibits produced by Applicant. Accordingly, it is unclear whether Applicant has withheld any documents based on its objections. Please identify whether Applicant has withheld documents based on its objections to Requests for Production Nos. 1-5, 6, 10, 15-16, 19-20, 22, 25, 30, 40-41, and 51.

Requests for Production Nos. 6, 33, 48, 53, 56, and 58-60

Applicant's objection to Requests for Production Nos. 6, 33, 48, 53, 56, and 58-60 on the grounds that responsive documents are readily available to Opposer is meritless. A document being readily available to a party is not a permissible objection to a request for production. Accordingly, Applicant must produce any documents within its possession, custody or control responsive to Requests for Production Nos. 6, 33, 48, 53, 56, and 58-60.

Requests for Production Nos. 34, 39, 42, 49, and 53

Applicant's objections to Requests for Production Nos. 34, 39, 42, and 53 on the grounds that the requests call for information or documents protected form disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery are meritless. Requests for Production Nos. 34, 39, 42, and 53 do not solely ask for documents or things protected by the work-product privilege or the attorney-client privilege. Indeed, it is common for parties to have non-privileged documents and/or things responsive to these document requests. Accordingly, Applicant's blanket privilege objection to Requests for Production Nos. 34, 39, 42, and 53 are without merit and Applicant must produce documents responsive to Requests for Production Nos. 34, 39, 42, and 53.

Requests for Production Nos. 8, 9, and 12

Applicant's responses to Requests for Production Nos. 8, 9, and 12 stated that Applicant has no documents or things responsive to this request. However, this directly contradicts Applicant's statements in its Interrogatories. Applicant has, at a minimum, referenced documents relating to goods sold by Applicant. Furthermore, Applicant stated in its Initial Disclosures that Applicant possesses "[d]ocuments reflecting Applicant's creation and first use of its mark" as well as "[d]ocuments reflecting Applicant's goods and services. Accordingly, Opposer must do a thorough search and produce all documents and things responsive to Requests for Production Nos. 8, 9, and 12.

Request for Production No. 13

Applicant objected to Request for Production Nos. 13 on the ground that the request is vague and ambiguous with respect to the phrases "first use," "intended use," and "any and all goods and/or services." Each of these phrases is commonly used, is not vague or ambiguous. Indeed, Applicant understands these phrases, as evidenced by the fact that Applicant uses these phrases to identify documents in its possession in its Initial Disclosures and the fact that Applicant has not objected to these terms in any other Discovery Requests. Additionally, these terms are defined by the TMEP.

Applicant did not identify any documents responsive to this request. However, Applicant stated in its Initial Disclosures that Applicant possesses "[d]ocuments reflecting Applicant's creation and first use of its mark" as well



as "[d]ocuments reflecting Applicant's goods and services." Accordingly, Applicant must provide all documents responsive to Request for Production No. 13.

Request for Production No.27

Applicant's response to Interrogatory No. 16 states that Applicant has spent approximately one hundred thousand dollars or more on advertising and promotion of Applicant's Mark since 2005. However, Applicant did not identify any documents responsive to this request. Please confirm Applicant has no documents responsive to this Document Request.

Request for Production No. 35

Applicant's response to Request for Production No. 35 is nonresponsive. Request for Production No. 35 is not an interrogatory but a request for production seeking "all documents and things referring or relating to any lawsuits, proceedings, or other formal legal proceedings to which Applicant was a party that were based on, concerned, or involved Applicant's Mark." Applicant must provide all documents and things responsive to Request for Production No. 35.

Request for Production No.40

Request for Production No. 40 requested all documents and things referring or relating to "pricing for the goods and/or services offered under Applicant's Mark." In response, Applicant pointed to the website www.monsterfishkeepers.com. However, no pricing information is present on the webpage www.monsterfishkeepers.com.To the extent any documents or things responsive to Request for Production No. 40 exist, Applicant must produce these documents.

Request for Production No.41

In Request for Production No. 41, Opposer requested all documents and things referring or relating to "Applicant's total sales (in units and dollars) of each product or service sold under Applicant's Mark on a monthly basis from the date of first sale to the present." In response, Applicant's response points to Exhibits M, N, and O. Exhibits M, N, and O appear to show PayPal transactions from January 9, 2009 through April 4, 2013. However,, the Document Request does not request documents concerning the total sales made by Applicant. Instead, it requests the total sales of goods and/or services sold or offered in connection with Applicant's Mark broken down separately by product and by month, from the date of first sale to present. Exs. M, N, and O fail to address the substance of the Request and are therefore non-responsive. To the extent documents responsive to Request for Production No. 41 exist, Applicant must promptly produce them.

Request for Production No. 51

In Request for Production No. 51, Opposer requested all documents and things referring or relating to "any comments or inquiries from customers or potential customers that Applicant has received relating to Opposer, Opposer's Marks, or Opposer's products." In response, Applicant pointed to the websites www.monsterfishkeepers.com and https://www.facebook.com/MonsterFishKeepers?ref=ts&fref=ts. However, the webpage www.monsterfishkeepers.com does not appear to be responsive to this Document Request. Additionally, MEC does not have access to comments or inquires from customers or potential customers relating to Opposer, Opposer's Marks, or Opposer's product that may have been sent to Applicant's Facebook profile at https://www.facebook.com/MonsterFishKeepers?ref=ts&fref=ts. Furthermore, Applicant must produce any other documents and/or things responsive to this Request, including any emails Applicant has received. Accordingly, Applicant must perform a thorough search of its documents and provide a copy of any emails, specific webpages, or other documents and/or things that show comments or inquiries from customers or potential customers that Applicant has received relating to Opposer, Opposer's Marks, or Opposer's products.

Request for Production No. 55



least Interrogatory Nos. 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27. Accordingly, Applicant must produce all non-privileged documents responsive to Request for Production No.55.

Request for Production No.56

In Request for Production No. 56, Opposer requested all documents and things referring or relating to documents and/or things "identified in Your Initial Disclosures." Applicant's Initial Disclosures stated that Applicant had at least four categories of documents in Applicant's possession, custody or control. However, Applicant has not produced any documents responsive to Request for Production No. 56. Applicant must produce all documents responsive to Request for Production No. 56.

Conclusion .

Please be aware that the foregoing is not an exhaustive list of all issues raised by Applicant's responses to Opposer's discovery requests. Once Applicant provides supplemental responses and documents, we may identify additional deficiencies.

Please provide full and complete supplementary responses to this letter as soon as possible. We are available to meet and confer on these issues on Monday, May 20 at 10 am PT. Please let me know if this time works for you, or propose another time at which you are available. As indicated above, although we hope to resolve this matter without the Board's intervention, if you fail to provide complete and acceptable answers and responsive documents, Opposer will have no choice but to seek assistance from the Board in resolving these issues.

Sincerely,

Brigette B. Chaput

CC:

Lynda J. Zadra-Symes

15222583/041513 - 15411536 051413

From:

Brigette.Chaput <Brigette.Chaput@knobbe.com>

Sent: To: Wednesday, May 15, 2013 5:35 PM

Cc:

Eve Brown (ebrown1@suffolk.edu) Lynda.Zadra-Symes; Emily.Sauter

Subject:

Opposition Nos. 91205924 and 91205893 (Our Ref. HANBEV.1336M/1346M)

Attachments:

2013-05-15 Meet and Confer re 2nd Set of Disc Req for Opp No. 91205893

MONSTERISHKEEPERS.PDF; 2013-05-15 Meet and Confer re 2nd Set of Disc. Req. for

Opp No. 91205924....pdf

Dear Eve,

Attached are letters addressing our concerns and including a request that we meet and confer regarding your client's responses to Opposer's Second Sets of Interrogatories and Second Sets of Request for Production of Documents and Things in connection with the oppositions listed above.

We look forward to hearing from you.

Best regards, Brigette

Brigette Chaput

Associate

Brigette.Chaput@knobbe.com

949-721-7673 Direct

Knobbe Martens

INTELLECTUAL PROPERTY LAW

five decades. one focus.

2040 Main Street, 14th Floor

Irvine, CA 92614

www.knobbe.com/brigette-chaput

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KNOBBE MARTENS OLSON & BEAR LLP

2040 Main St., 14th Fl., Irvine, CA 92614 T (949) 760-0404

> **Brigette Chaput** Brigette.Chaput@knobbe.com

May 15, 2013 Ms. Eve Brown Suffolk University Law School 120 Tremont Street Boston, MA 02108 ebrown1@suffolk.edu

Re:

Monster Energy Company v. Li-Wei Chih

Mark:

Opposition No.: 91205924

Our Reference No.: HANBEV.1346M

Dear Ms. Brown

We have reviewed your client's responses to Opposer's Second Set of Interrogatories Nos. 29-30 and Second Set of Requests for Production of Documents and Things. The responses are severely deficient and need to be promptly amended and supplemented.

Pursuant to TBMP § 524, TBMP § 523.02, F.R.C.P. 37 and 37 C.F.R. § 2.120(e), we are writing in an attempt to reach an amicable resolution of these discovery disputes. If Applicant does not adequately address all the issues identified in this letter by May 22, 2013, Opposer will have no alternative but to file motions with the Trademark Trial and Appeal Board (the "Board") to compel complete responses to Opposer's First Set of Interrogatories and First Set of Discovery Requests and to test the sufficiency of Applicant's responses to Opposer's First Set of Requests for Admissions.

A. Opposer's Second Set of Interrogatories

INTERROGATORY NO. 29: Describe in detail how and in what way any of Opposer's Marks were considered or referenced during the selection, development, or design of Applicant's Mark.

Applicant's Response to Interrogatory No. 29: Subject to and without waiver of objections, Applicant responds as follows: Applicant directs Opposer's attention to Exhibit JJ from Applicant's Responses to Opposer's Requests for Production of Documents.

Opposer's Response: Applicant's response is nonresponsive. Exhibit JJ does not describe in detail how and in what way any of Opposer's Marks were considered or referenced during the selection, development, or design of Applicant's Mark. Applicant must provide a complete response to Interrogatory No. 29.

INTERROGATORY NO. 30: Identify all third-party product names, service names, or marks of which you are aware that consist of a stylized letter "M."

Opposer's Response: Applicant's response consisted solely of a meritless objection on the grounds that "this information is readily available to Opposer at the United States Patent and Trademark Office website." However, this is not a proper basis for an objection. Furthermore, the United States Patent and Trademark Office does not have information regarding Applicant's awareness of product names, service names, or marks of which you are aware that consist of a stylized letter "M." Accordingly, Applicant's objection is without merit and Applicant must provide a response to Interrogatory No. 30.

B. Opposer's Second Set of Document Requests

Request for Production Nos. 68-70

In Request for Production Nos. 68, 69, and 70, Opposer requested price lists of each product and/or service sold in connection with Applicant's Mark, documents sufficient to identify all goods and/or services that Applicant provides or intends to provide under Applicant's Marks in the United States, and all documents and things relating to any third-party marks that include a stylized letter "M." Applicant's responses did not produce any documents and/or things, but rather referred Opposer to websites. Applicant must produce all documents and things responsive to Requests for Production Nos. 68-70.

Conclusion

Please be aware that the foregoing is not an exhaustive list of all issues raised by Applicant's responses to Opposer's discovery requests. Once Applicant provides supplemental responses and documents, we may identify additional deficiencies.

Please provide full and complete supplementary responses to this letter as soon as possible. We are available to meet and confer on these issues on Monday, May 20 at 10 am PT. Please let me know if this time works for you, or propose another time at which you are available. As indicated above, although we hope to resolve this matter without the Board's intervention, if you fail to provide complete and acceptable answers and responsive documents, Opposer will have no choice but to seek assistance from the Board in resolving these issues.

Sincerely

Brigette B. Chaput

CC:

Lynda J. Zadra-Symes Emily K. Sauter

15222583 041513



KNOBBE MARTENS OLSON & BEAR LLP

2040 Main St., 14th Fl., Irvine, CA 92614 T (949) 760-0404

Brigette Chaput Brigette.Chaput@knobbe.com

May 15, 2013

Ms. Eve Brown
Suffolk University Law School
120 Tremont Street
Boston, MA 02108
ebrown1@suffolk.edu

Re:

Monster Energy Company v. Li-Wei Chih

Mark: MONSTERFISHKEEPERS

Opposition No.: 91205893

Our Reference No.: HANBEV.1336M

Dear Ms. Brown:

We have reviewed your client's responses to Opposer's Second Set of Interrogatories Nos. 29-30, and Second Set of Requests for Production of Documents and Things Nos. 61-70. The responses are severely deficient and need to be promptly amended and supplemented.

Pursuant to TBMP § 524, TBMP § 523.02, F.R.C.P. 37 and 37 C.F.R. § 2.120(e), we are writing in an attempt to reach an amicable resolution of these discovery disputes. If Applicant does not adequately address all the issues identified in this letter by <u>May 22, 2013</u>, Opposer will have no alternative but to file motions with the Trademark Trial and Appeal Board (the "Board") to compel complete responses to Opposer's First Set of Interrogatories and First Set of Discovery Requests and to test the sufficiency of Applicant's responses to Opposer's First Set of Requests for Admissions.

A. Opposer's Second Set of Interrogatories

INTERROGATORY NO. 30: Describe in detail how and in what way any of Opposer's Marks were considered or referenced during the selection, development, or design of Applicant's Mark.

<u>Applicant's Response to Interrogatory No. 29:</u> Subject to and without waiver of objections, Applicant responds as follows: Applicant directs Opposer's attention to Exhibit KK from Applicant's Responses to Opposer's Requests for Production of Documents.

Opposer's Response: Applicant's response is nonresponsive. Exhibit KK does not describe in detail how and in what way any of Opposer's Marks were considered or referenced during the selection, development, or design of Applicant's Mark. Applicant must provide a complete response to Interrogatory No. 29.

INTERROGATORY NO. 31: Identify all third-party product names, service names, or marks of which you are aware that include the term MONSTER.

Opposer's Response: Applicant's response consisted solely of a meritless objection on the grounds that "this information is readily available to Opposer at the United States Patent and Trademark Office website." However, this is not a proper basis for an objection. Furthermore, the United States Patent and Trademark Office does not have information regarding Applicant's awareness of product names, service names, or marks of which you are aware that consist of a stylized letter "M." Accordingly, Applicant's objection is without merit and Applicant must provide a response to Interrogatory No. 31.



B. Opposer's Second Set of Document Requests

Request for Production Nos. 68-70

In Request for Production Nos. 68, 69, and 70, Opposer requested price lists of each product and/or service sold in connection with Applicant's Mark, documents sufficient to identify all goods and/or services that Applicant provides or intends to provide under Applicant's Marks in the United States, and all documents and things relating to any third-party marks that include a stylized letter "M." Applicant's responses did not produce any documents and/or things, but instead merely referred Opposer to websites. Applicant must produce all documents and things responsive to Requests for Production Nos. 68-70.

Conclusion

Please be aware that the foregoing is not an exhaustive list of all issues raised by Applicant's responses to Opposer's discovery requests. Once Applicant provides supplemental responses and documents, we may identify additional deficiencies.

Please provide full and complete supplementary responses to this letter as soon as possible. We are available to meet and confer on these issues on Monday, May 20 at 10 am PT. Please let me know if this time works for you, or propose another time at which you are available. As indicated above, although we hope to resolve this matter without the Board's intervention, if you fail to provide complete and acceptable answers and responsive documents, Opposer will have no choice but to seek assistance from the Board in resolving these issues.

Sincerely,

Brigette B. Chaput

CC:

Lynda J. Zadra-Symes Emily K. Sauter

15222583 041513

EXHIBIT 6

From: Eve Brown [mailto:ebrown1@suffolk.edu]

Sent: Friday, May 24, 2013 2:15 PM

To: Brigette.Chaput Cc: Carl Alexander Chiulli Subject: Meet and Confer

Dear Brigette,

In preparation for this evening's meet and confer, I'd like to outline our position regarding your discovery concerns.

First, please note that my client is an individual hobbyist, not a large business, and that it is not his practice to save or maintain records. He also does not have detailed memories of events that occurred several years ago. Accordingly, to the extent that he simply does not have the documentation or records that you seek, or that he honestly and genuinely does not recollect specific details, we will not be supplementing our production. My client is unwilling to speak to events or particulars that he does not recall in order to provide you with greater detail, as that would amount to fraud. Further, in many instances, the specific details that you seek are not necessary or even relevant to your case.

Second, to the extent that, as provided in FRCP 26, the discovery that you requested can be sought from a source that is more convenient and less burdensome, such as directly from my client's online store, his website, his facebook page, or the USPTO database, we will not be cutting, pasting, and reformatting information for you. In particular, the list of items he is selling and the current price list is provided on his website, which we produced for you. Also, the comments and messages he has received regarding the lack of confusion between Monster Energy Company and Monsterfishkeepers are most conveniently and easily found on his facebook page and www.supportmonsterfishkeepers.com site. To cut and paste these comments would not only be unnecessarily burdensome, but would result in a much less clean and readable document than you could obtain by simply viewing these sites directly.

To the limited extent that your objections raise a reasonable need for clarification, I am happy to draw up a supplemental document for you that explains any minor and inadvertent inconsistencies. You will receive that supplemental document early next week.

In the meantime, if there is any reasonable explanation or piece of information that you genuinely and in good faith require in order to prepare your pretrial disclosures, please let me know on our call. As stated previously, my client is eager to move forward to trial on these cases, as he is extremely confident that he will prevail.

If, after our call tonight and after what I have explained above about my client's good faith responses, you feel that you need to motion to TTAB to compel additional documents or explanations, you are welcome to do so.

I look forward to our discussion at 6pm PST.

Sincerely, Eve NOTICE: This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

EXHIBIT 7

From:

Emily.Sauter

Sent:

Saturday, May 25, 2013 12:09 AM

To:

'Eve Brown'

Subject:

FW:

Eve,

Thanks again for talking with Brigitte, Abe and I tonight. I'm writing to confirm our discussion.

General Concerns

First, you re-sent me Exhibits P-T. I have received those; thanks.

Second, I mentioned that some of the documents have dates and/or other information that may be important that were cut off in the version that was produced. We agreed that you would resend these to ensure that we have access to a complete version of these documents. They are:

Third, I mentioned that we were concerned that your client may not have thoroughly searched his records. Specifically, we are concerned that he may have some emails and/or documents related to advertising that were not produced. We agreed that you would confirm that there are no invoices relating to advertising expenditures, and that you would ensure that your client has searched his email accounts, websites, and website records thoroughly. We agreed that Applicant would confirm that all of his websites, Facebook pages, and email accounts have no responsive documents that have not been produced in this case, including, but not limited to, the websites www.monsterfishkeepers.com, http://aquariacentral.com/, <a hre

http://www.change.org/petitions/monster-energy-company-stop-trademark-bullying-monsterfishkeepers-com, the Facebook pages Monsterfishkeepers, Support Monsterfishkeepers Against Monster Energy (Open Group), Support MonsterFishkeepers Against Monster Energy (the Community), AquariaCentral.com, MonsterAquariaNetwork.com, and Li Neoprodigy, and the email Teammonsterfishkeepers@gmail.com. We agreed that I would send you a list of electronic terms that may recover responsive documents. The list of terms is below:

- Monster Energy
- Energy drinks
- M Claw
- M Mark
- MONSTERFISHKEEPERS Mark
- Litigation
- Opposition
- 85/518033
- 91205893
- Support Monsterfishkeepers
- Change.org
- petition
- Supportmonsterfishkeepers.com
- First use
- Trademark
- Application
- Registration

- Infringement
- Lawsuit
- Attorney
- Law
- First sale
- First use
- Invoice
- Purchase order
- Shirt
- T-shirt
- Cap
- Hat
- Baseball
- Golf
- Sweatshirt
- Sweat shirt
- Hooded
- Knitted
- Long-sleeve
- Long-sleeved
- Sports
- Sweater
- T-shirt
- Decal
- Sticker
- Keychain
- Price

Fourth, we discussed the specific issues detailed in our letters, as outlined below.

Requests for Admissions

Applicant agreed to amend his responses to RFA 6 for both Opposition Nos. 91205893 and 91205924 to denied.

Interrogatories

Applicant agreed to supplement his responses to Interrogatory No. 1 for both Opposition Nos. 91205893 and 91205924 to summarize the substance of Li-Wei Chih's knowledge regarding the selection of Applicant's Mark.

Applicant agreed to supplement his responses to Interrogatory No. 3 for both Opposition Nos. 91205893 and 91205924 to identify the dates Applicant's Mark was selected, and to describe why Applicant's Mark was selected.

Applicant agreed to supplement his responses to Interrogatory No. 4 for Opposition No. 91205893 to identify all alternative marks that were considered, but ultimately rejected, by Applicant prior to the adoption of Applicant's Mark.

Applicant agreed to supplement his responses to Interrogatory No. 5 for both Opposition Nos. 91205893 and 91205924 to affirmatively state that there were no other searches performed besides the search summarized in Exhibits JJ and KK, respectively, and to describe the facts surrounding the 2 searches that were performed.

Applicant agreed to provide a response to Interrogatory No. 6 for Opposition No. 91205893 and supplement his response to Interrogatory No. 6 Opposition No. 91205924 to describe the reasons Applicant selected or adopted that Mark

Applicant agreed to supplement his responses to Interrogatory Nos. 7 and 8 for both Opposition Nos. 91205893 and 91205924 to describe the first sale of each good and/or service Applicant's Mark has been used in connection with. For example, Applicant agreed to describe the first sale of baseball caps, hats, golf caps, hooded sweat shirts, knitted caps, Long-sleeved shirts, sports caps and/or hats, sweaters, magazine articles, website forum, and any other good and/or service Applicant's Marks have been used on. Furthermore, to the extent that Applicant does not know the specific details surrounding the first sale of each product (i.e. the first sale date, the person/entity who first told the product, the person/entity who first purchased that product, the retail prices of that product, and the person most knowledgeable about the first sale of each product and/or service), we agreed that Applicant would affirmatively state that Applicant does not know that specific detail.

Applicant agreed to supplement his responses to Interrogatory No. 9 for both Opposition Nos. 91205893 and 91205924 to describe each way Applicant's mark is or will be used in connection with each good and/or service the Mark is used on, including the size, placement, and coloring of the Mark as used on each type of good and/or service.

Applicant agreed to supplement his responses to Interrogatory No. 10 for both Opposition Nos. 91205893 and 91205924 to describe Applicant's definition of "monsterfish and enthusiasts worldwide," to describe the demographics of only the *U.S. purchasers* of the goods and/or services sold or offered in connection with Applicant's Marks, and to describe the age and gender of monsterfish hobbyists and enthusiasts worldwide. To the extent that Applicant does not know the age and gender of the monsterfish hobbyists and enthusiasts that are the purchasers of goods and/or services sold or offered in connection with Applicant's Mark, Applicant agreed to affirmatively state that it does not know the age and gender of the monsterfish hobbyists and enthusiasts that are the purchasers of goods and/or services sold or offered in connection with Applicant's Mark.

Applicant agreed to supplement his responses to Interrogatory No. 11 for both Opposition Nos. 91205893 and 91205924 to specifically describe the fish expositions and monsterfish events where Applicant provides goods and/or services sold or offered in connection with Applicant's Mark, and to confirm that Applicant has no plans to provide goods and/or services sold or offered in connection with Applicant's Mark through any other trade channels.

Applicant agreed to confirm with your client that his responses to Interrogatory No. 13 for both Opposition Nos. 91205893 and 91205924 are complete by confirming he has no customers from using the mark at jujitsu events, fish exhibitions, and/or other monsterfish events.

Applicant agreed to supplement his responses to Interrogatory No. 14 for both Opposition Nos. 91205893 and 91205924 to separately for each good and/or service sold or offered in connection with Applicant's Mark, state the total sales in units and dollars on a monthly basis from the date of first sale to the present. Applicant also agreed to search his accounting records used for tax purposes for responsive documents. To the extent that Applicant only has information from Exs. M, N, and O, Applicant agreed to supplement his response to identify whether the sales in Exs. M, N, and O included sales of goods and/or services outside of Applicant's Class 25 goods, whether the sales amounts include shipping and handling fees, tax fees, and any other applicable fees, and to identify whether these sales included international sales.

Applicant agreed to supplement his responses to Interrogatory No. 15 for both Opposition Nos. 91205893 and 91205924 to state the average wholesale and retail price for each product or service sold or offered in connection with Applicant's mark. To the extent that Applicant does not have any wholesale prices, Applicant agreed to supplement his response to Interrogatory No. 15 to affirmatively state that Applicant does not have any wholesale prices.

Applicant agreed to supplement his responses to Interrogatory No. 16 for Opposition No. 91205924 and Interrogatory No. 17 for Opposition No. 91205893 to explain the manners Applicant promotes and/or advertises goods and/or services in connection with Applicants Mark at jujitsu events, fish exhibitions, and other monsterfish events.

Applicant agreed to supplement his responses to Interrogatory No. 18 for both Opposition Nos. 91205893 and 91205924 to confirm that this encounter was Applicant's first awareness of Opposer's Marks, to identify the date of Applicant's encounter, to identify the location of the rest stop, and to describe any other details surrounding Applicant's awareness of Opposer's marks. To the extent that Applicant cannot recall any of the specific details surrounding Applicant's first awareness of Opposer's Marks, Applicant agreed to supplement his response to affirmatively state that.

Applicant agreed to provide a response to Interrogatory No. 19 for both Opposition Nos. 91205893 and 91205924 by affirmatively stating that no searches or investigations were conducted by or on behalf of Applicant in connection with, or concerning, Opposer's Marks.

Applicant agreed to supplement his responses to Interrogatory No. 20 for Opposition No. 91205893 and Interrogatory No. 24 for Opposition No. 91205924 to describe the circumstances surrounding Applicant's selection and use of the wording "UNLEASH YOUR INNER MONSTER" by identifying the specific date Applicant first used the wording "UNLEASH YOUR INNER MONSTER," by describing why and how Applicant selected the wording "UNLEASH YOUR INNER MONSTER," and by identifying the time period Applicant has used the wording "UNLEASH YOUR INNER MONSTER."

Applicant agreed to supplement his response to Interrogatory No. 21 for Opposition No. 91205893 and Interrogatory No. 25 for Opposition No. 91205924 to describe all uses of the design , to identify with as much specificity as possible the first use of the design , and to describe how and why Applicant selected the design and the colors used on the . To the extent that Applicant has only used the design at one chidren's jujitsu competition, Applicant agreed to affirmatively state so in his response.

Applicant agreed to supplement his response to Interrogatory No. 22 (for both Opposition Nos. 91205893 and 91205924) to provide a response without reference to Opposition No. 91205924, so that the response can be used in this proceeding.

Applicant agreed that, for Interrogatory No. 23 for Opposition Nos. 91205893 and Interrogatory No. 20 for Opposition No. 91205924, Applicant will confirm that he has done a complete and thorough search to identify any inquiries or comments regarding an association between Applicant's Goods on the one hand, and Opposer's products bearing Opposer's Marks on the other hand, and if that is the case, Applicant will affirmatively state that Applicant has done a complete and thorough search to identify any inquiries or comments regarding an association between Applicant's Goods on the one hand, and Opposer's products bearing Opposer's Marks on the other hand.

Applicant agreed to provide responses to Interrogatory Nos. 24-26 for Opposition No. 91205893 and Interrogatory Nos. 21-23 for Opposition No. 91205924.

Applicant agreed to supplement his responses to Interrogatory No. 29 for Opposition No. 91205893 and Interrogatory No. 28 for Opposition No. 91205924 to identify all documents referenced or relied upon in preparing responses to Applicant's Interrogatories.

Applicant agreed to amend his responses to Interrogatory No. 30 for Opposition No. 91205893 and Interrogatory No. 29 for Opposition No. 91205924 to affirmatively state that Opposer's Marks were not considered or referenced during the selection, development, or design of Applicant's Mark.

Applicant agreed to supplement his responses to Interrogatory No. 31 for Opposition No. 91205893 and Interrogatory No. 30 for Opposition No. 91205924 to identify all third-party product names, service names, or marks of which you are aware that include the term MONSTER. To the extent that Applicant is not aware of any third-party product names, service names, or marks that include the term MONSTER, Applicant agreed to affirmatively state so in his response.

Document Requests

Applicant agreed that for each document request referenced in Opposer's meet and confer letters where Applicant has not produced any documents responsive to that request, Applicant will confirm that he has conducted a search for responsive documents and affirmatively state in his response to that request that he has no documents responsive to that request.

Applicant agreed that for each document request where Applicant's response references webpages, that Applicant will provide documents containing screenshots of each responsive webpage.

Applicant agreed that for each document request reference in Opposer's meet and confer letters where Applicant has produced documents responsive to that request, that Applicant will state that it has produced documents responsive to that request, that it is not withholding any documents responsive to that request, and that Applicant has completed his document production for that request.

Concluding Notes

Applicant agreed that he will provide his supplemental responses by May 30, 2013.

It is probably a good idea for us to plan to touch base after Applicant serves his supplemental responses. Please advise whether you are available for a call to touch base between 10-11 am PT/1-2 pm ET on Friday, May 31, 2013.

Thanks and have a good holiday weekend,

Emily Sauter

Associate Emily.Sauter@knobbe.com 949-721-5341 **Direct**

Knobbe Martens

five decades. one focus.
2040 Main St., 14th Fl.
Irvine, CA 92614
www.knobbe.com/emily-sauter

EXHIBIT 8

From:

Emily.Sauter

Sent:

Thursday, May 30, 2013 9:10 PM

To:

Eve Brown

Subject:

Re: Supplemental responses

Sure, that works. I don't believe we have filed the stipulated extension yet, so we will just adjust the date of that accordingly.

Sent from my iPhone

On May 30, 2013, at 6:02 PM, "Eve Brown" < ebrown1@suffolk.edu> wrote:

> Dear Emily,

>

- > My client, Mr. Chih has not yet been able to send me his signature page for the supplemental responses. If you would agree to accept the responses tomorrow by 5pm EST, I will stipulate to another day extension on your end as well.
- > Thank you in advance for your understanding, Eve

EXHIBIT 9

From:

Eve Brown <ebrown1@suffolk.edu>

Sent:

Friday, May 31, 2013 8:01 PM

To:

Brigette.Chaput; Emily.Sauter

Subject:

Applicant's Supplementary Discovery Responses

Attachments:

SUPP RESPONSES.pdf

Dear Brigette and Emily,

Attached please find Applicant's Supplementary Discovery Responses in Opposition No. 91205924, as requested. Hard copies will be mailed to you.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MONSTER ENERGY COMPANY, Oppo	oser)
)
v.)
) Opposition No: 91205924
) Serial No.: 85/508374
CHIH, LI-WEI, Applicant.) Mark: M
)

APPLICANT'S SUPPLEMENTAL DISCOVERY RESPONSES

Pursuant to the Rules of Practice of the United States Trademark Trial and Appeal Board and the applicable Federal Rules of Civil Procedure, Applicant Li-Wei Chih hereby provides the requested supplemental discovery responses to Opposer Monster Energy Company, in writing and under oath.

These supplemental responses shall under no circumstances be interpreted as an admission of Applicant's initial failure to respond. Applicant maintains that all responses, documents, and things that he has produced in this case have been complete, thorough, and in good faith. Nevertheless, Applicant is willing to supplement his responses in the spirit of compromise and to expedite the resolution of this case.

DEFINITIONS

- 1. The term "Applicant" as used herein denotes Li-Wei Chih.
- 2. The term "Opposer" as used herein denotes Monster Energy Company, its subsidiaries and divisions, its predecessors and successors, and officers, directors, employees, agents, and representatives thereof.
- 3. The term "Notice of Opposition" as used herein denotes Opposer's Notice of Opposition, filed with the United States Patent and Trademark Office, in opposition of Applicant's application for registration of the "M" Mark.

- 4. The term "Applicant's Mark" as used herein denotes the "M" Mark, serial No. 85/508,374, as before the United States Patent and Trademark Office for registration.
- 5. The term "Monsterfish" or "monsterfish" as used herein denotes large, rare and exotic fish of all species.

SUPPLEMENTAL RESPONSES TO OPPOSER'S REQUESTS FOR ADMISSION REQUEST FOR ADMISSION NO. 6

Admit that Applicant first used Applicant's Mark on Applicant's Goods in interstate commerce on May 15, 2005.

SUPPLEMENTAL RESPONSE TO NO. 6

Denied. Applicant first used Applicant's Mark on Applicant's Goods as defined in Opposer's Resuests for Admission in 2009. Applicant first used Applicant's Mark in interstate commerce in connection with his class 38 goods (specifically, online forums for the transmission of messages among computer users concerning fish) on March 30, 2005.

SUPPLEMENTAL RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1

Identify all persons with knowledge about how Applicant's Mark was created, conceived, selected, cleared, adopted, or acquired and the substance of each person's knowledge.

SUPPLEMENTAL RESPONSE TO NO. 1

Applicant has already identified himself, Li-Wei Chih, as a person with knowledge about how Applicant's Mark was created, conceived, selected, cleared, adopted, or acquired. The substance of his knowledge includes his own decision-making process, and how and why the mark was created and selected. Applicant further identifies the website http://www.logodesignguru.com, which Applicant hired to create his first logo on

February 11, 2005. Applicant did not have contact or communication with any identifiable individual through this website. After Applicant became frustrated with the lack of designs offered by http://www.logodesignguru.com, Applicant began collaborating with Alex Yang of www.directpixel.com, who helped Applicant to create the M logo with devil horns and a forked devil tail as a way to depict the devilish nature of the monsterfish that are the subject of Applicant's website and online forum.

INTERROGATORY NO. 3

Describe in detail the circumstances surrounding Applicant's selection of Applicant's Mark, including describing why and how Applicant's Mark was selected and identifying the dates Applicant's Mark was selected.

SUPPLEMENTAL RESPONSE TO NO. 3

Applicant began keeping monsterfish, as defined in the Definitions section of these Responses, in 2001. Monsterfish keeping was, at that time, a popular and trendy hobby. In 2004, Applicant had the idea to start a blog to discuss monsterfish keeping. The blog evolved into an online community forum to connect fellow monsterfish hobbyists. In 2005, Applicant decided to formally brand his endeavor by adopting an official name and logo. His word mark was based on a Japanese pictorial book titled Monster Fish Keepers, published by Pisces. Applicant then engaged http://www.logodesignguru.com to design a logo to accompany his word mark. After Applicant became frustrated with the lack of designs offered by http://www.logodesignguru.com, Applicant began to personally brainstorm ideas. In thinking about the nature of his business, Applicant came up with the idea to add a pair of devil horns and a forked devil tail to the letter "M" for "Monsterfish." Applicant thought of this concept because of the "devilish" nature of the

monsterfish that are the subject of his website and online forum. Applicant collaborated with Alex Yang of www.directpixel.com, to draw the actual "M" that Applicant had conceived of. Once drawn, Applicant approved the mark because he considered it to be an appropriate reflection of the nature of his business. Applicant adopted the current mark on or around March 27, 2005.

INTERROGATORY NO. 4

Identify all alternative marks that were considered, but ultimately rejected, by Applicant prior to the adoption of Applicant's Mark.

SUPPLEMENTAL RESPONSE TO NO. 4

Applicant confirms that the only other marks that were considered depicted skeletons of ferocious looking fish baring sharp teeth. Sketches of each of these alternative marks have already been produced to Opposer. Applicant ultimately rejected these marks in favor of his "M" mark.

INTERROGATORY NO. 5

Describe each search or investigation conducted by or on behalf of You in connection with Applicant's Mark or any variation thereof, including, but not limited to, any search of the records of the United States Patent and Trademark Office or of any other records or publications.

SUPPLEMENTAL RESPONSE TO NO. 5

Applicant hired Litman Law, a law firm that advertised trademark search services on the Internet, to search the availability of his "Monsterfishkeepers" and "M" marks in the Fall of 2005. He chose Litman Law because they were the first to appear in his Internet search engine results and they were located close to Applicant's home. Litman Law produced its

comprehensive search results in a packet given to Applicant on October 10, 2005. This packet has already been produced for Opposer. Applicant conducted no other searches or any party hired by Applicant, other than the usual search conducted by the USPTO examiner as part of the trademark registration process.

INTERROGATORY NO. 6

Describe the process by which You selected and adopted Applicant's Mark including, but not limited to, the steps You took to determine You could use and register the mark, the reasons for why You selected or adopted that mark, how the mark was first used in commerce including the goods and services, and the dates of first use for each good or service.

SUPPLEMENTAL RESPONSE TO NO. 6

As stated previously, Applicant based the idea for his word mark on a Japanese pictorial book titled Monster Fish Keepers, published by Pisces. Applicant then engaged http://www.logodesignguru.com to design a logo to accompany his word mark. After Applicant became frustrated with the lack of designs offered by http://www.logodesignguru.com, Applicant had the idea to draw an "M" for "Monsterfish," with a devil horn and forked devil tail incorporated into the letter design. Applicant thought of this concept because of the "devilish" nature of the monsterfish that are the subject of his website and online forum. The mark was first used in commerce in May 2005 on Applicant's online monster fish forum. Also as stated previously, Applicant hired Litman Law to conduct a comprehensive trademark search of both marks prior to applying for registration with the USPTO. As Opposer can see from the trademark search results previously produced, Litman Law did not identify any existing marks, including

any marks owned or used by Opposer, as causing potential consumer confusion with Applicant's marks. Based on Litman Law's opinion that Applicant could legally register his marks without infringing upon any existing marks or causing any consumer confusion in the marketplace, Applicant applied for his marks with the USPTO. As part of the usual registration process, the USPTO examining attorney conducted an independent search and also did not identify any likelihood of confusion with any existing marks. Both marks were published for opposition, during which time there were no objections from any third party, including Opposer. Based on these circumstances, Applicant believed that he could use and register his marks, which he successfully did in 2005. When, by 2009, his online forum had gained popularity, Applicant decided to start making t-shirts and other Class 25 goods to sell on his website and to offer for promotional purposes at fish conferences and expositions. Because he had already successfully registered both his word and design mark, which are now incontestable, he did not conduct additional searches before registering the same marks in an additional class. Applicant's Mark was first used in commerce in 2005 on his website. The first sale of a t-shirt depicting Applicant's Mark took place on January 9, 2009. After full consideration and thorough searches of his records, Applicant confirms that he does not remember and does not possess records documenting the first sale of his other Class 25 goods.

INTERROGATORY NO. 7

For each product listed in Applicant's Application, describe the circumstances surrounding the first sale of that product, including, but not limited to, the date when You first sold that product, the person or entity that you contend sold the product, the person

or entity that you contend purchased the product, the retail prices charged for the product, and the person(s) most knowledgeable about those sales.

SUPPLEMENTAL RESPONSE TO NO. 7

Applicant's first sale of a shirt depicting his mark was on or around January 9, 2009. The shirt was sold through Applicant's website for the retail price of \$15.00. Applicant does not remember nor have records documenting the person/entity who purchased that shirt. Applicant is the person most knowledgeable about the sale. After full consideration and thorough searches of his records, Applicant confirms that he does not remember and does not possess records documenting the first sale of his other Class 25 goods.

INTERROGATORY NO. 8

For any uses of the mark not identified in response to Interrogatory No.7, identify the dates of that use and describe that use including, but not limited to, describing the circumstances surrounding the first use of the marks in that manner by You, and identifying all documents evidencing the first use of the marks in that manner and all persons knowledgeable about that use.

SUPPLEMENTAL RESPONSE TO NO. 8

Applicant objects to this interrogatory on the grounds that it seeks information, documents or things that are not relevant to this Opposition. Any uses of Applicant's Mark that are covered by his incontestable Class 38 registration are not the appropriate subject of this proceeding. Without waiving this objection, Applicant responds that Applicant's Mark is used on his websites and online forums. The first use of the website and forum was in March 2005. Applicant has also used his Mark in fish magazines including Tropical Fish Magazine and Aquarium Fish International. The first use of the

Mark in a magazine was a half page advertisement in the March 2005 issue of Tropical Fish Magazine. Applicant also displays his mark on conference display boards and signs at various fish expositions and conferences. Applicant possesses photographs of some of the above uses, which he will produce to Opposer if he has not already done so.

Applicant is the person most knowledgeable about these uses. Presumably all readers of the magazines and of his website and all persons who viewed his conference displays are also knowledgeable, but those individuals are not identifiable by Applicant.

INTERROGATORY NO. 9

Describe each way Applicant's Mark is or will be used in connection with each good and/or service identified in response to Interrogatory Nos. 7 and 8, including but not limited to the size, placement, and coloring of the mark.

SUPPLEMENTAL RESPONSE TO NO. 9

Applicant's Mark is displayed on Applicant's Goods and on his websites, magazine ads, and conference displays in white and/or black ink on a red, pink, or black background. The size of the mark varies widely depending on the nature of the use. The mark is usually used with, next to, or on the same product as the word "Monsterfishkeepers" and a fish.

INTERROGATORY NO. 10

Describe in detail the actual or intended demographics of the purchasers for the goods and/or services sold or offered in connection with Applicant's Mark.

SUPPLEMENTAL RESPONSE TO NO. 10

The actual and intended demographics of the purchasers for the goods and/or services sold or offered in connection with Applicant's Mark are monsterfish hobbyists and

enthusiasts. As defined in the Definitions section of these and previous Responses to Opposer, "monsterfish" are large, rare and exotic fish of all species. These fish are typically predatory. "Monsterfish hobbyists and enthusiasts" are keepers and admirers of large, rare, exotic, predatory fish. Applicant believes that monsterfish hobbyists and enthusiasts are typically about 40% 18-34 year olds and 23% 35-49 year olds. Applicant does not know the ages of the rest. Applicant does not know the gender statistics of monsterfish hobbyists and enthusiasts. Applicant is also unable to identify what percentage of his intended demographics reside in the United States versus international locations.

INTERROGATORY NO. 11

Describe in detail the trade channels, including, but not limited to, wholesale and retail channels, through which Applicant provides to consumers and/or plans to provide to consumers the goods and/or services sold or offered in connection with Applicant's Mark.

SUPPLEMENTAL RESPONSE TO NO. 11

Applicant exclusively sells and distributes his goods and services through his website and at fish conferences and expositions, including the American Cichlid Association annual conference, the Catfish Convention, and the Stingray Symposium. Applicant does not, nor does he plan to, provide any goods or services through any other trade channels.

INTERROGATORY NO. 13

Identify all past or present customers (including, for example, retail, Internet, mail order, and/or wholesale) of the goods and/or services sold or offered in connection with Applicant's Mark.

SUPPLEMENTAL RESPONSE TO NO. 13

See response to No. 11.

INTERROGATORY NO. 14

Separately for each good and/or service sold or offered in connection with Applicant's Mark, state the total sales (in units and dollars) on a monthly basis from the date of first sale to the present.

SUPPLEMENTAL RESPONSE TO NO. 14

Applicant restates his objection that this interrogatory contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Without waiving this objection, Applicant confirms that he has performed a thorough search and does not possess records and/or the ability to search and sort the records that would allow him to respond to this Interrogatory.

INTERROGATORY NO. 15

For each product or service sold or offered in connection with Applicant's Mark, state the average wholesale and retail price or intended average wholesale and retail price.

SUPPLEMENTAL RESPONSE TO NO. 15

Applicant restates his objection that this interrogatory contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Without waiving this objection, Applicant responds that the average retail price of t-shirts is \$15.00. The average retail price of hats is \$13.00. The average retail price of emblems and key chains is \$12.00. The average retail price of static aquarium tank stickers is \$3.00. Applicant does not calculate wholesale prices and does not have the ability to separate the average cost of shipping and tax from the above prices.

INTERROGATORY NO. 16

Describe in detail all manners in which the goods and/or services sold or offered in connection with Applicant's Mark have been advertised or promoted and/or plan to be advertised or promoted.

SUPPLEMENTAL RESPONSE TO NO. 16

Clarifying Applicant's previous response, Applicant does not advertise or promote his Class 25 goods. He only advertises and promotes his Class 38 services (specifically, his website and online community forum). These services are not the subject of this opposition proceeding. Applicant's Class 38 marks are incontestable. Applicant's Class 25 goods are made available on his Class 38 website under a tab labeled "Shop" but are not promoted or advertised.

INTERROGATORY NO. 18

Describe in detail the circumstances surrounding Applicant's awareness of Opposer's Marks, including how and when Applicant first became aware of Opposer's Marks.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 18

Applicant confirms that he first encountered Opposer's Marks, after Applicant's own marks were being used in commerce, in an advertisement at a rest stop. Applicant does not recall any additional specific details concerning the exact date or location.

INTERROGATORY NO. 19

Describe each search or investigation conducted by or on behalf of You in connection with, or concerning, Opposer's Marks or any variation thereof, including, but not limited to, any search of the records of the United States Patent and Trademark Office or of any other records or publications.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 19

Please see Applicant's comprehensive responses to Interrogatories No. 5 and 6. Applicant did not, nor has he ever had any reason to, conduct a specific search in connection with Opposer's Marks, as Opposer's Marks have never and would never cause a likelihood of confusion with Applicant's Mark. Opposer's Marks have never been identified by the USPTO, Litman Law which conducted Applicant's trademark search, or any consumer or third party as being confusingly similar to Applicant's Marks.

INTERROGATORY NO. 20

Describe any instances of an inquiry or comment regarding an association between

Applicant's Goods on the one hand, and Opposer's products bearing Opposer's Marks,
including the Claw Icon mark, on the other hand, including identifying all persons having
knowledge thereof and all documents relating thereto.

SUPPLEMENTAL RESPONSE TO NO. 20

The only comments regarding an association between Applicant's Goods on the one hand, and Opposer's products bearing Opposer's Marks, including the Claw Icon mark, on the other hand, have been in specific response to this Opposition proceeding. All comments Applicant is aware of strongly refute, rather than support, any likelihood of confusion claim Opposer may assert. All comments are publicly available on Applicant's website and Facebook page and can easily be viewed by Opposer. Applicant has never received any private messages, letters, inquiries or e-mails regarding Opposer. Prior to this Opposition proceeding, Applicant never received, read, or heard of any inquiries or comments regarding any association between Applicant and Opposer or their respective marks, goods, or services.

INTERROGATORY NO. 21

Describe the factual bases supporting Applicant's allegation in paragraph 1 of Applicant's Affirmative Defenses that "Opposer has failed to state a claim upon which relief can be granted."

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 21

Because there is factually no likelihood of confusion between Applicant's and Opposer's Marks and no dilution of Opposer's Marks has occurred, Opposer has failed to state a claim upon which relief can be granted.

INTERROGATORY NO. 22

Describe the factual bases supporting Applicant's allegation in paragraph 2 of Applicant's Affirmative Defenses that "[t]here is no likelihood of confusion with Opposer's mark to bar registration of Applicant's mark under Lanham Act §2(d)."

SUPPLEMENTAL RESPONSE TO NO. 22

Applicant asserts that there is no likelihood of confusion with Opposer's Marks because the marks are substantially and obviously different. Opposer's Mark is explicitly described by Opposer as a "claw mark" or "claw icon." In its trademark application, Opposer describes its claw mark as having the following elements: "Claws; Feet, bird; Parts of birds: claws, talons, feet, foot tracks; Talons; Tracks, bird." Besides being a bird claw mark, Opposer's mark is also jagged, where Applicant's Mark is rounded and smooth. Further, Opposer's Mark is displayed most frequently in the colors black and/or neon green, as stated by Opposer, which differs from Applicant's Mark. The elements of Applicant's Mark are clearly devil horns and a forked devil tail, which

have nothing to do with and are not visually similar to Opposer's bird claw mark.

Furthermore, as stated above, Opposer's Marks have never been identified by the USPTO, Litman Law which conducted Applicant's trademark search, or any consumer or third party as being confusingly similar to Applicant's Marks.

INTERROGATORY NO. 23

Describe the factual bases supporting Applicant's allegation in paragraph 3 of Applicant's Affirmative Defenses that "[t]here is no dilution of Opposer's mark by Applicant's mark under Lanham Act §43(c)."

SUPPLEMENTARY RESPONSE TO INTERROGATORY NO. 23

Subject to and without waiving the objection that this interrogatory calls for attorney work product, Applicant responds that Opposer fails to meet the requirements for proving dilution under Lanham Act §43(c).

INTERROGATORY NO. 24

Describe in detail the circumstances surrounding Applicant's selection and use of the wording "UNLEASH YOUR INNER MONSTER", including the first use of that wording.

SUPPLEMENTAL RESPONSE TO NO. 24

Applicant objects to this Interrogatory to the extent that it seeks information, documents, or things that are not relevant to this Opposition. "UNLEASH YOUR INNER MONSTER" is neither the subject of a trademark application by Applicant nor the subject of this or any other Opposition proceeding. Without waiving this objection, Applicant supplements his response by stating that he is uncertain as to the exact date of first use of the wording but that it was prior to March 30, 2008. Applicant further

explains that in the context of his business, "Unleash your Inner Monster" means getting a bigger fish tank and more exotic fish.

INTERROGATORY NO. 25

Describe in detail the circumstances surrounding Applicant's selection and use of the "M/UNLEASH YOUR INNER MONSTER" design, including the first use of that design.

SUPPLEMENTAL RESPONSE TO NO. 25

Applicant confirms that he created the patch shown in Interrogatory No. 25 sometime in February 2013 to give to his child's jujitsu team for inspiration at children's jujitsu competitions. Applicant has not, nor does he plan to ever, offer this design or patch for sale. He does not recall the exact date of first use.

INTERROGATORY NO. 28

Identify all documents referenced or relied upon in preparing Applicant's responses to these Interrogatories.

SUPPLEMENTAL RESPONSE TO NO. 28

Applicant relied only on documents produced to Opposer in connection with this proceeding. Applicant is not withholding or refusing to produce any documents relating to Opposer or to this Opposition.

INTERROGATORY NO. 29

Describe in detail how and in what way any of Opposer's Marks were considered or referenced during the selection, development, or design of Applicant's Mark.

SUPPLEMENTAL RESPONSE TO NO. 29

Please see Applicant's comprehensive responses to Interrogatories No. 5, 6, and 19.

Applicant did not, nor has he ever had any reason to, consider or reference any of

Opposer's Marks during the selection, development, or design of Applicant's Mark.

INTERROGATORY NO. 30

Identify all third party product names, service names, or marks of which you are aware that consist of a stylized letter "M."

SUPPLEMENTAL RESPONSE TO NO. 30

Applicant does not recall being aware of any third party product names, service names, or marks that consist of a stylized letter "M" outside of the context of this proceeding. As part of this proceeding, he has become aware of over 500 third party marks consisting of a stylized letter "M" in Class 25 alone by conducting a search on the USPTO website. Applicant will not identify each of these 500+ marks as they are readily and more conveniently available to Opposer through a public and quick trademark search on http://www.uspto.gov.

SUPPLEMENTAL RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

Applicant confirms after a complete and thorough search that he has produced all documents responsive to each request, with the exception of documents publicly and readily available from sources that are more convenient and less burdensome, such as Applicant's public website, his public Facebook page, or the USPTO database. Applicant further confirms that he is not withholding any documents responsive to any request, and that he has completed his document production for each request.

Dated: May 31, 2013

By: /Li-Wei Chih/ Li-Wei Chih Applicant

By: /Eve J. Brown/ Eve J. Brown Attorney for Applicant 120 Tremont Street Boston, MA 01208

CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2013, I caused a copy of Applicant's Supplemental Discovery Responses to be served on Opposer in this matter by electronic mail to the counsel listed below:

Brigette B. Chaput Knobbe Martens Olson & Bear LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 brigette.chaput@knobbe.com

Emily Sauter Knobbe Martens Olson & Bear LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614 Emily.Sauter@knobbe.com

Dated: May 31, 2013

By: /EveBrown/

Eve Brown
Attorney for Applicant
120 Tremont Street
Boston, Massachusetts 02108
Email: ebrown1@suffolk.edu

Tel: (617) 305-1641 Fax: (617) 742-2139

EXHIBIT 10

Knobbe Martens Olson & Bear LLP

Intellectual Property Law

2040 Main Street Fourteenth Floor Irvine, CA 92614 Tel 949-760-0404 Fax 949-760-9502 www.kmob.com

Lynda J. Zadra-Symes ljs@kmob.com

February 24, 2012

VIA FEDERAL EXPRESS AND ELECTRONIC MAIL

neoprodigy@yahoo.com

Mr. Li-Wei Chih P.O. Box 10763 Silver Spring, Maryland, 20914

Re: <u>Unauthorized Use of MONSTER ENERGY Trademarks and Pending U.S.</u>
<u>Trademark Applications</u>

Marks: MONSTER APPAREL, MONSTERFISHKEEPERS, and

Serial Nos.: 85/507,590, 85/518,033 and 85/508,374

Our Ref.: HANBEV.1335TIS

Dear Mr. Chih:

We represent Monster Energy Company ("Monster") in intellectual property matters.

Monster is the owner of the well-known MONSTER ENERGY® trademark, used in connection with its line of energy drinks and nutritional supplements. Monster's MONSTER ENERGY® line of products are sold under Monster's famous MONSTER™, MONSTER

ENERGY® and ("Claw Icon") marks. Monster also uses its famous Claw Icon mark extensively in connection with clothing and accessories, as well as stickers and decals.

Monster's well-known MONSTER ENERGY® and ® marks are global brands that have appeared on billions of Monster's beverage cans and in extensive nationwide promotions. These include, among other things, sponsorship of music festivals, athletes, and sports events that are televised live nationwide and internationally and prominently feature Monster's

MONSTER ENERGY® and W® marks. Numerous televised athletes wear clothing bearing Monster's Claw Icon mark to promote Monster's brand. In addition, Monster uses its trademarks and trade dress extensively in connection with clothing, accessories, and sports gear, examples of which are shown below:

Knobbe Martens Cison & Bear LLP

Mr. Li-Wei Chih February 24, 2012 Page -2-



To protect its substantial goodwill and investment in its marks, Monster owns numerous

trademark registrations worldwide for its MONSTER ENERGY® and connection with goods such as beverages, nutritional supplements, clothing and stickers, including but not limited to U.S. Registration Nos. 2,903,214, 3,134,841, 3,434,821, 3,434,822, 3,908,600, 3,908,601, 3,914,828, 3,923,683, 3,963,668, 3,963,669, 4,011,301, 3,949,989, 3,936,161, and 4,051,650. Monster also owns trademark registrations for other marks incorporating the word MONSTER, including JAVA MONSTER, MONSTER KHAOS, MONSTER M-80, MONSTER MIXXD, and X-PRESSO MONSTER (including, U.S. Registration Nos. 3,959,457, 3,939,395, 3,966,554, 3,852,123, and 4,014,306). In addition, Monster is the owner of Copyright Registration No. VA 1-789-900 for the Claw Icon and Copyright Registrations Nos. VA 1-727-577 and VA 2-737-654 prominently featuring the Claw Icon on Monster's beverage packaging.

It has recently come to Monster's attention that you are using the marks MONSTER APPAREL, MONSTERFISHKEEPERS, and in connection with the advertising and sale of clothing and accessories on your website http://store.monsteraquarianetwork.com/. It also appears from the website that you also intend to use these marks on stickers.



Knebbe Martens Olson & Bear IIP

Mr. Li-Wei Chih February 24, 2012 Page -3-

In addition, you have filed U.S. trademark applications to register these marks for goods including "Baseball caps and hats; Golf caps; Hats; Hooded sweat shirts; Knitted caps; Long-sleeved shirts; Sports caps and hats; Sweaters; T-shirts" in International Class 25.

Your use of the marks MONSTER, MONSTER APPAREL and MONSTERFISHKEEPERS in connection with clothing, stickers and accessories constitutes trademark infringement and unfair competition because such use is likely to cause confusion with

our client's MONSTERTM, MONSTER ENERGY® and Monster also used in connection with clothing, accessories, and stickers. In addition, your use of MONSTER

APPAREL, MONSTERFISHKEEPERS, and in connection with clothing, accessories, and stickers is likely to dilute the distinctive quality of Monster's MONSTER ENERGY®,

MONSTERTM and marks. There is a likelihood that customers will mistakenly believe there is some affiliation or association between your products and our client's marks and/or products. Thus, your use of these marks in connection with clothing, accessories, and stickers infringes Monster's trademark rights and constitutes unfair competition under state and federal

laws. In addition, your logo is substantially similar to our client's copyrighted logo, and therefore constitutes copyright infringement.

Accordingly, we hereby demand that you withdraw your pending trademark applications Serial Nos. 85/508374, 85/518,033 and 85/507,590, and cease and desist from all use of the

marks MONSTER APPAREL, MONSTERFISHKEEPERS, and in connection with clothing (including hats, caps and any other wearable garments), accessories and stickers and any other items that are likely to cause confusion with our client's valuable marks. If you do not withdraw these applications, our client intends to vigorously oppose them.

Please respond to this letter by no later than <u>March 7, 2012</u>. If we do not hear from you by that date, we will assume that you do not intend to comply. Nothing in this letter should be deemed a waiver of any of our Monster's rights and remedies, all of which are expressly reserved.

Sincerely,

Lynda J. Zadra-Symes

cc: Monster Energy Company Mr. J. Wayne Hou, Esq. TTAB Opposition No. 91205924 Monster Energy Company v. Li-Wei Chih

EXHIBIT 11

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MONSTER ENERGY COMPANY)	Opposition No. 91205924
Opposer,)	Serial No. 85/508,374
)	Mark:
V.,)	
)	
CHIH, LI-WEI)	
Annlicant)	



APPLICANT'S RULE 26(A)(1) INITIAL DISCLOSURES

Applicant Li-Wei Chih ("Applicant") hereby submits its initial disclosures as required by Rule 26(a)(1) of the Federal Rules of Civil Procedure 37 C.F.R. 2.120(a)(3).

A. In accordance with Rule 26(a)(1)(A), following is a list of persons who are likely to have discoverable non-privileged information that Applicant may use to support its claims or defenses, unless solely for impeachment. Applicant reserves the right to amend this list upon identification of other individuals through discovery or through development of the issues.

Applicant and its principals, members, and employees (contact through counsel):

Subject: use and ownership of Applicant's mark; design, inspiration, and creation for Applicant's mark; Applicant's business operations and activities; Applicant's goods and services;

Applicant's trademark application; facts and defenses alleged in the Notice of Opposition and Answer thereto.

1. Li-Wei Chih, P.O. Box 10763, Silver Spring, MD, 20914, 290-593-6050

Representatives from Opposer and its affiliates, licensees, and related entities:

Subject: use and ownership of Opposer's marks, Opposer's business operations and activities,
Opposer's products and services, Opposer's trademark applications and registrations, Opposer's

assertion of fame, facts alleged in the Notice of Opposition and Answer thereto.

B. In accordance with Rule 26(a)(1)(B), a copy of or description by category of all

documents and things in Applicant's possession, custody, or control that it may use to support its

claims or defenses, unless solely for impeachment. A representative sample of these documents

can be provided upon request. Applicant reserves the right to amend this list upon identification

of other documents and things through discovery or through development of the issues.

1. Documents associated with Applicant's federal trademark application.

2. Documents reflecting Applicant's creation and first use of its mark.

3. Documents reflecting Applicant's goods and services.

4. Documents reflecting Opposer's goods and services.

Dated this 9th day of November 9, 2012.

Jeffrey Pokorak

Attorney for Applicant 120 Tremont Street

Boston, Massachusetts 02108

Tel: (617) 573-8100 Fax: (617) 742-2139

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **INITIAL DISCLOSURES** upon Applicant by depositing one copy thereof in the United States Mail, first-class postage prepaid, on November 9, 2012, addressed as follows:

> Lynda Zadra-Symes Brigette B. Chaput Knobbe, Martens, Olson & Bear, LLP 2040 Main Street, Fourteenth Floor Irvine, CA 92614

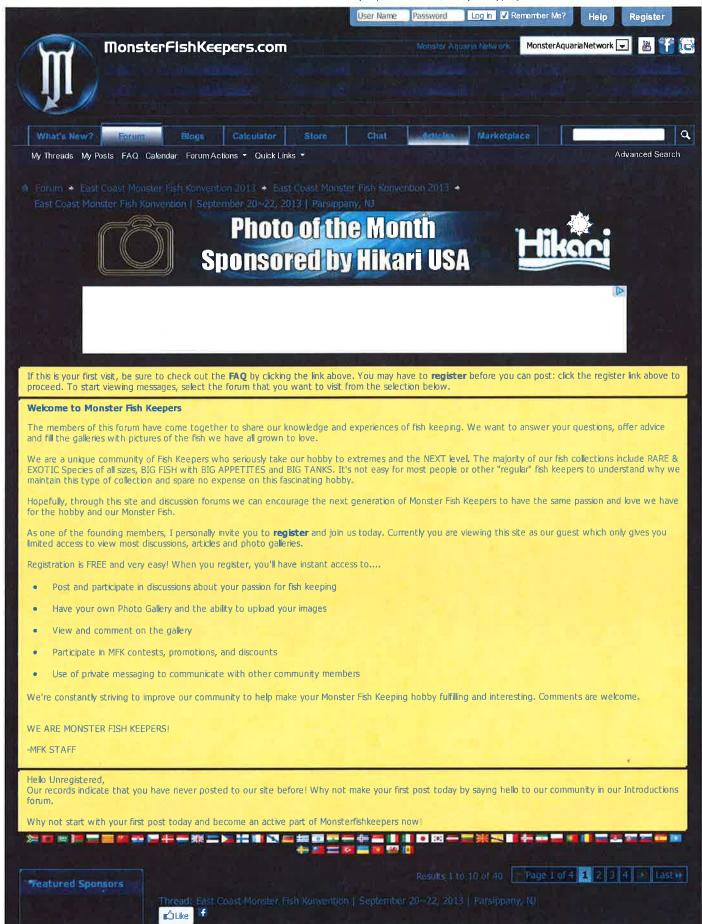
> > Jeffrey Pokorak, Attorney for Applicant 120 Tremont St.

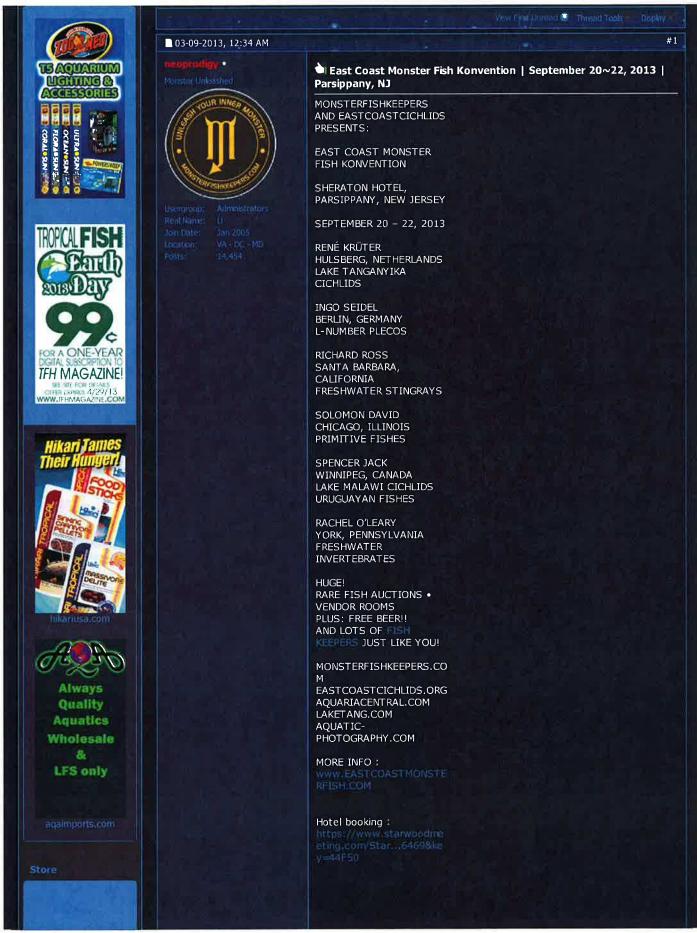
Boston, MA 02108

Tel: (617) 573-8100 Fax: (617) 742-2139

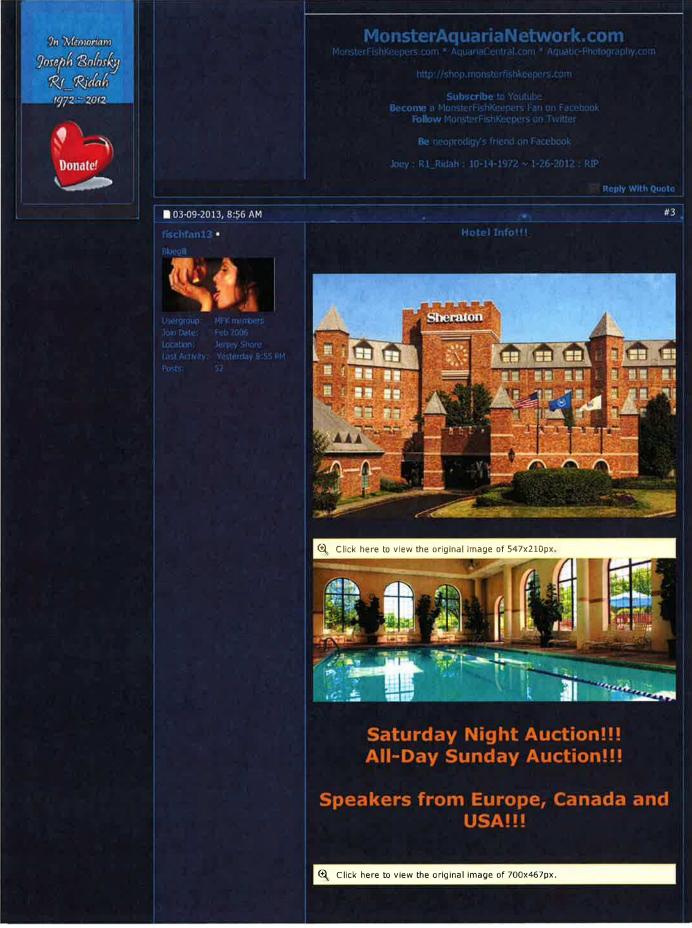
EXHIBIT 12

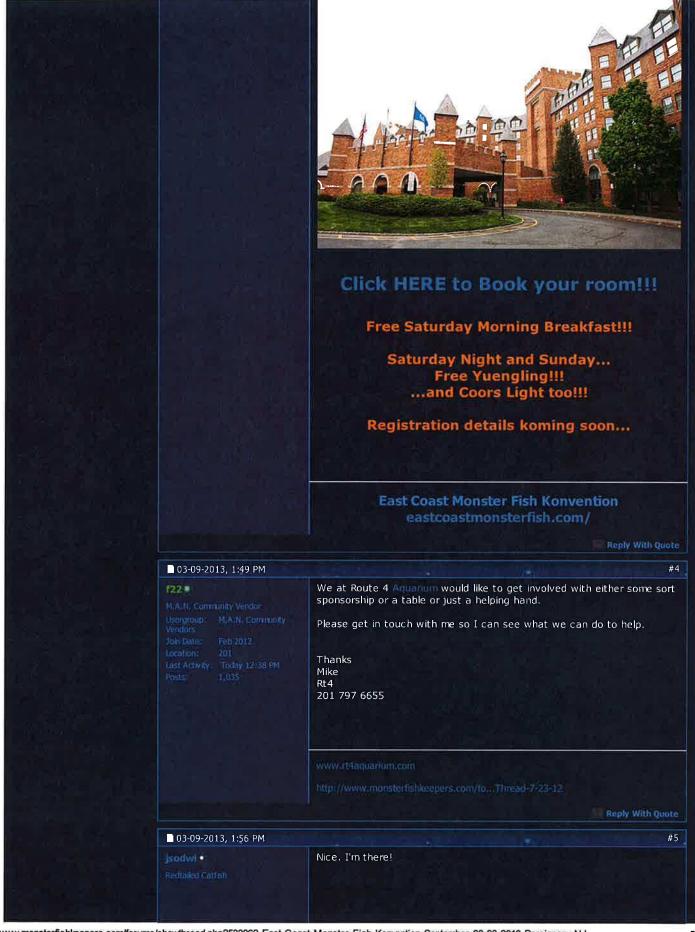


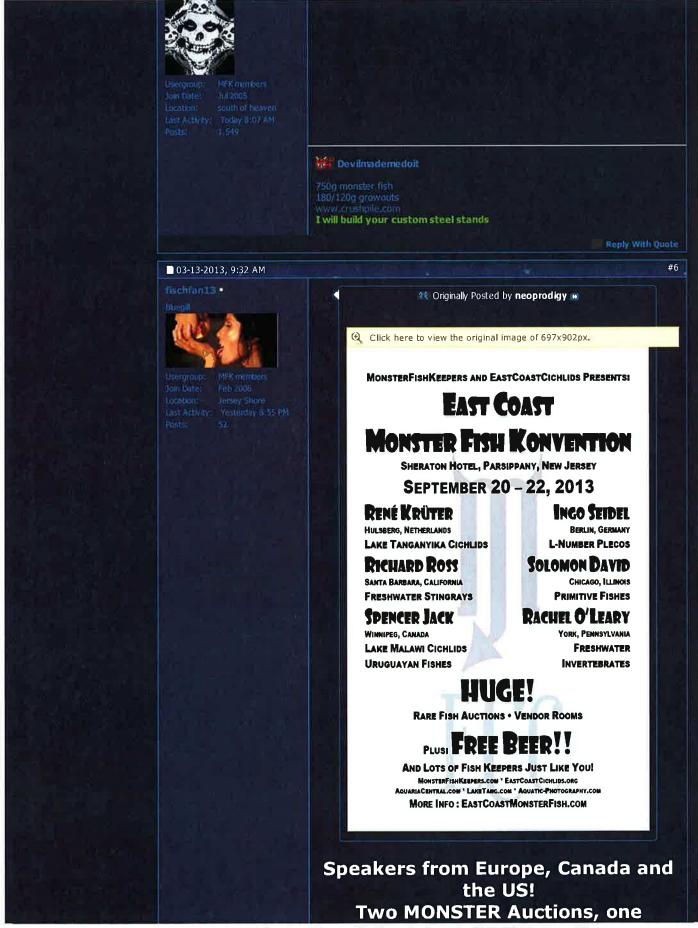


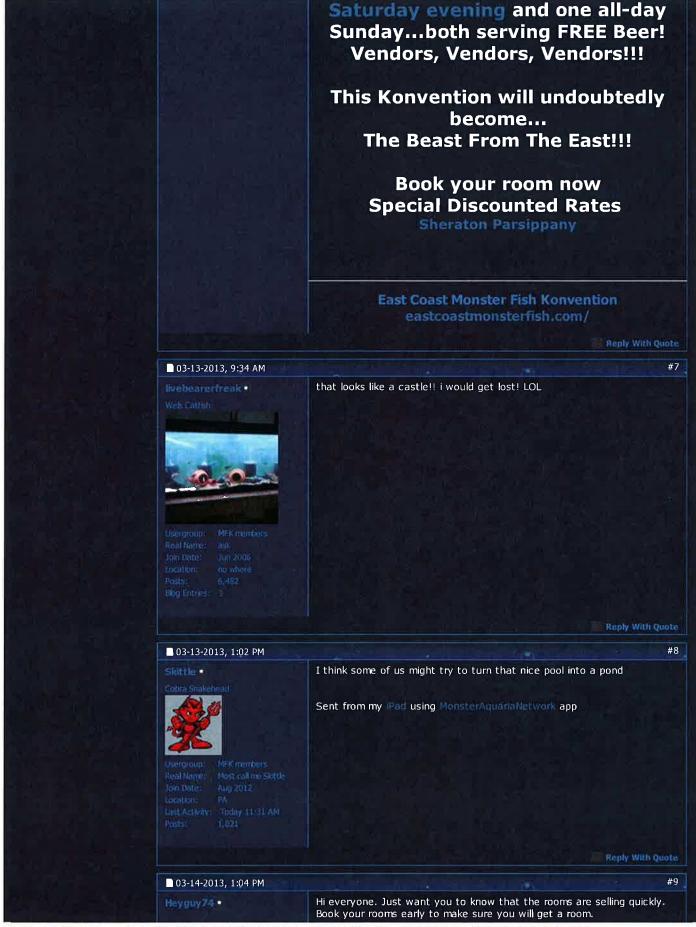


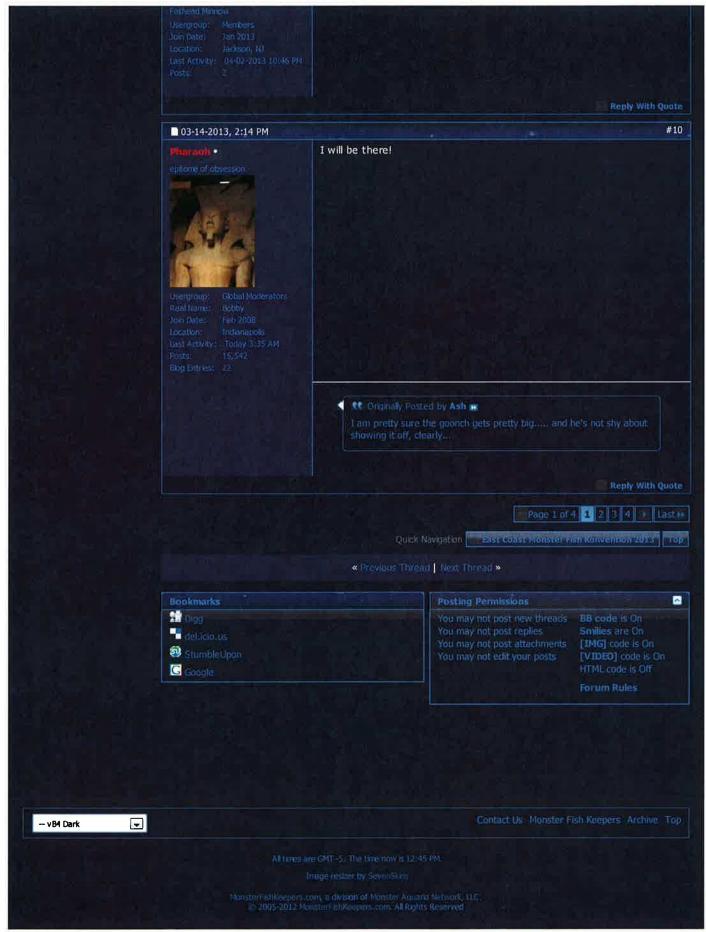












Site services provided by Monster Aquaria Network, LLS

Digital Point modules: Sphinx-based search

Support MonsterFishKeepers™



Monster Energy Company vs. MonsterFishKeepers.com

On February 24, Monster Energy Company sent a cease & desist letter to MonsterFishKeepers.com in regards to their use of the marks MonsterFishKeepers, and the MonsterFishKeepers "M" symbol in connection with clothing, accessories, and stickers. On July 2, 2012 Monster Energy Company initiated Opposition proceedings before the Trademark Trial and Appeal Board claiming that the use of these marks constitutes Class 25 trademark infringement and would cause confusion with their own MONSTER™, MONSTER ENERGY®, and MONSTER "Claw M®" marks. It also requires us to drop the Class 25 trademark applications that were pending at the time for merchandising. MonsterFishKeepers.com asserted that an informed consumer would be unlikely to mistake the two brands as one is specifically marketed towards the keepers of large fishes in specialized online sites & aquarium stores while the other is more openly marketed in sports-related facilities and traditional retail stores.

As you know, we have been using our MonsterFishKeepers and the MonsterFishKeepers "M" design marks since March 30, 2005 and the marks were duly registered with the U.S. Patent and Trademark Office since October 23, 2007. We strongly believe that the law is on MonsterFishKeepers.com's side, but MonsterFishKeepers.com will not be able to fund the legal proceedings that would be needed to resolve this dispute with Monster Energy. Unfortunately, even if MonsterFishKeepers.com wins the first round of the case; in the end,

Things You Can Do

- Sign this Petition
- Join Our Facebook Group
- How You Can Help

Follow MonsterFishKeepers

- Facebook
- Twitter

Monster Aquaria Network Sites

- Monster Fish Keepers
- Aquaria Central
- Aquatic Photography

Others with Monster Problems

UnleashDaBeast.com

Recent Posts

Monster Energy Company vs.
 MonsterFishKeepers.com

Monster Energy would certainly outlast MonsterFishKeepers.com in the legal proceedings and appeals because of their vast resources. The lengthy process could cause MonsterFishKeepers.com to run out of money, since there is no way that such a small company could compete with such a large company in terms of legal fees. As such, we, the staff of the Monster Aquaria Network, ask that you, the reader & MonsterFishKeepers.com members & supporters, help us to convince Monster Energy Corporation to drop this issue immediately. We intend to contact them to make our discontent known in a clear and professional manner, as well as hit them at the bottom line by boycotting all Monster Energy Corporation products. We would greatly appreciate it if you would take a small amount of time out of your day to let Monster Energy know that what they're doing is not going to be well regarded/well perceived by us as consumers of their soft drink products.

In closing, we thank you for your continued support, and we hope that we will be able to enjoy many more years of fish-filled fun once this issue is resolved.

Monster Energy Corporation Contact Information

Address:

Monster Beverage Corporation Attention: Consumer Relations 550 Monica Circle Suite 201 Corona, CA 92880

Phone:

1-800-426-7367

Email:

info@monsterbevcorp.com

http://monsterbevcorp.com/contact.php

Monster Energy Company

Address:

550 Monica Circle, Suite 201 Corona, CA 92880

Phone:

866-322-4466 Ext. 585

http://www.monsterenergy.com/us/en/home/#!/pages%3Acontact

Contact

TeamMonsterFishKeepers@gmail.com

Monster Energy Corporation Brands

- Monster Energy
- Hansen's Natural
- Peace Tea
- Worx Energy
- Blue Sky



Filed under Featured



33 Comments

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Support MonsterFishKeepers^{1M} >

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See All đ 5,175 members **American Cichlid Association** * Join Group South American Fish Join Group Join Group Join Group 3,870 members AquaBid,com 822 members 853 members Fishroom Fishroom Related Groups Files http://www.change.org/petitions/monster-energy-company-stop-trademark-bullying-monsterfishkeepers-**Photos** About Monster Energy Compan. L◆ Chat (Off) Support Monster Fish Keepers TM Against Monster Energy 😵 **Bullying MonsterFishKeepers.com!** www.change.org Glad to be apart of this group Support and Sign here: http://support.monsterfishkeepers.com/ **Ashley Sutherland** 3 people like this. Share 115 hours ago Support and Spread the words: **Adam Reyes** RECENT POSTS Open Group Sign this Petition:

2,297 members Join Group

Monster Aquaria Network is made up of three aquarium

S

hobby sites and their respective forums:



Chris Taylor Think the whole thing is ridiculous its just a word why can't anyone else use it!

July 28, 2012 at 2:39pm via mobile



Neil Greenleaf Andrew thank you. Joshua feel free to piss off

July 28, 2012 at 2:42pm



Joshua Saul Sorry to disturb your naïveté but you are supporting a cause that has no meaning

July 28, 2012 at 6:45pm via mobile



And yes you can feel free to give me crap about my redtail and how ima bad fish keeper for even owning one. on that note heres a song for you protect our beloved MFK. Hell imnot even liked on MFK most of the time but because they are the best site for info on large catfish I use them. Neil Greenleaf A causes meaning is derived by the group intent toword a common goal, your intent is to be an asshole. Ours is to http://www.youtube.com/watch?v=tJixs2FoZ_Y



Montgomery Gentry - What Do Ya Think About That

performing What Do Ya Think About That. Music video by Montgomery Gentry (C) 2007 SONY BMG MUSIC ENTERTAINMENT

July 29, 2012 at 6:05am



energy certainly exists so you are either accusing Li of not knowing what order? What are your intentions here sir? A C&D order from monster Jason Rochester Josh why dont you provide the documentation you are drawing your conclusions from? Have you seen the C&D it mea... See More

July 29, 2012 at 6:33am via mobile



provide real documents or a lawyers interpretation of the actual C&D Jason Rochester accusations are based on facts. Unless you can order please go piss up a rope.

July 29, 2012 at 6:37am via mobile



Fed Judy

your logo and the name 'Monster' on anything, or is it the use of them Hey Li... Can you give us some more specific detail about what exactly Monster Energy's cease and desist order is asking for? Is it the use of specifically on printed apparel? Publishing the letter would be an interesting read.

Share · July 27, 2012 at 5:18am near Madison, WI



and stickers and any other items that are likely to cause confusion with Monsterfishkeepers, and M in connection with clothing, accessories ** Li Neoprodigy "cease and desist from all use of the mark our client's valuable mark."



July 27, 2012 at 5:32am

including but not limited to use in connection with display, advertising, matters in good faith, your client must agree to immediately: "... Li Neoprodigy 2nd letter ... if you wish to amicably resolve this promotion or sale of any apparel or accessories" July 27, 2012 at 5:36am · Edited



products out there, movies, etc that use the name monster in them, Marcia Silverman Just totally angers me...there are so many are they going after all of them?

Daniel Cohen unbelievable!

July 27, 2012 at 5:41am



Sharon Bonish Sounds to me they want people to run and cower instead of standing and fighting for their rights







out small business owners and try and intimidate them. Darm it makes me so angry!! I'd love to stomp on them wearing 5 inch high heels!!! Blonde FishGal My heart goes out to you Li. Sounds like they seek July 27, 2012 at 6:40am · 🖒 1



Terri Vance If I were still able to wear 5" stilettos, I'd gladly join in w/ you!!!

July 27, 2012 at 7:08am · 🖒 1



Blonde FishGal Strap 'em on Terri, and we'll stomp together! You can lean on me for balance 🙂

July 27, 2012 at 7:12am · 🖒 1



thick leather & heavy, well built soles/heels on those babies)--& I can lay work almost as well w/ a good ol' pair of traditional poop-kickers (extra-Wave days should do nicely...once I find them-lol. Then again, might Terri Vance Hmmn...my ol' boots from back in the Benetar/New my hands on them real fast! 🙂 July 27, 2012 at 7:23am · 🖒 1



they are at least contacting ME and finding out what is up (or contacting requesting a C&D for is the printing a clothing in the colors of black with green logos... seems pretty specific, but that is what they say. Here is people who run the fan pages are not particularly happy with me, but one.... go let them know what the company they support is doing. Ted Judy Thank you... I have been posting on ME fan FB pages, someone). The story they are getting is that the only thing ME is and unlike the ME-maintained pages I am not being banned. The

Better from you (who has the letter) than me:

https://www.facebook.com/MonsterEnergyUSA/posts/12769609404014 9?ref=notif¬if t=share comment

July 27, 2012 at 7:55am



David Hale What was the initial thing that triggered this? Who actually owns the TM/ pat on clothing, marketing material July 27, 2012 at 8:49am via mobile



Li Neoprodigy that is a "fan" site... dont think MEC, MBC not their lawyer will tell them anything... those just assumptions... July 27, 2012 at 9:58am · Edited



Li Neoprodigy Also Monster Energy's M logo was not registered till 11/8/2011 in class 25 (t-shirts class)

July 27, 2012 at 10:06am · 🖒 1



David Hale so that would be the only criteria they have a leg to different enities & look that there is no conflict between the two. stand on is with the shirts? But I would still advised that it is two





that way. If Li would post the actual text of the documents online I think Joshua Saul Can you READ? They aren't going after just anyone with the word "Monster" in the name, it was just presented to you you would see who is at fault.

July 28, 2012 at 1:17pm



Kelly Francis Did you miss the quotation marks in the first two responses? He did.

July 28, 2012 at 1:24pm · 🖒 1



Joshua Saul How about posting a scan of ALL documents received and sent and not just selected phrases.

July 28, 2012 at 1:25pm



Kelly Francis On the flip side of that, how much of it is meaningless lawyer BS and how much actually means something to us? I'd rather he wade through the babble than me. I see your point though...

July 28, 2012 at 1:27pm : 11



Scott William Hinckley Joshua asking for documents, is like the "Birthers" asking for Obarra's BC. July 28, 2012 at 7:55pm : 43



NOT need to have it registered to sell shirts, which is why the application content of what they received. That hasn't been done yet, so everyone about APARREL. They aren't contesting the name or logo, they are just assumptions. My assertion, which Li has confirmed is that this is entirely saying you can't register for using it on shirts and such. BTW you do has to guess as to what the problem is. However, if you know the assistance from an IP or legal bully, they post the entire scanned itself is useless as is everyone in here getting worke up like crazy. USPTO and can read the case history there you can make some Joshua Saul Birthers? No. Typically if someone asks for public

Withdraw the application and the whole issue goes away

July 28, 2012 at 11:17pm via mobile



nothing. All you are doing is trying to start fights with people. How about cries of a kid not getting what he wants just because he wants it. I have you or anyone else. Do you want more info? Do a public record search if documents are his property and he does not need to prove anything to stop acting like a selfish child. Your demands are nothing more then the because you are coming across as someone who needs to grow up and Sean E Armstrong Is he the only person (controller of the site and being constructive and talking TO people not talking DOWN to people looked for anything that he has said that is looking for more then just ou are interested. All that he owes you is well frankly he owes you rights to everything involved) listed on the C&D order? Then the awareness over 2 images that frankly look NOTHING ALIKE July 28, 2012 at 11:35pm · Edited · €5 2

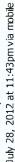


word as to what it says. What's the big secret? He already told me what unless he shares it. However, YOU are confortable takin him at his I think is important, and that is that THEY ARE NOT CO... See More Joshua Saul Seriously? It's not a public record so I can't read it July 28, 2012 at 11:37pm via mobile



supporting causes that they knowingly state they have no clue about (o even an interest in learning) really gets under my skin. So, sorry if it looks like hate to you but I'm just trying to educate people here that Joshua Saul Sean, I hope we get to meet sometime, because I really don't hate anyone, but I despise ignorance and people things are

Not what they seem.





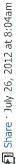
Li Neoprodigy

http://blogs.inlandsocal.com/iguide/2011/01/energy-drink-companyclaims-mo.html

Energy drink company claims Monster infringed on trademark -InlandSoCal.com - iGuide

blogs, inlandsocal, com

An Alabama-based energy drink company that uses the synthetic saliva of a hornet as an ingredient claims Corona-based Hansen Beverage Co. has



5 people like this.



http://www.iptrademarkattorney.com/2010/10/trademark-attorneybeverage-drink-monster-energy-killer-buzz-hansen-pbev.html

Energy Drink Trademark Lawsuit; Monster's Killer B vs. Killer Buzz :: Los Angeles Intellectu

www.iptrademarkattorney.com

Energy Drink Trademark Lawsuit: Monster's Killer B vs. Killer Buzz :: Los Angeles Intellectual Property Trademark Attorney Blog

July 26, 2012 at 8:06am



Patrick Kelly So what ever happened to it.

July 26, 2012 at 8:49am



Stella Pratt these people at monster really are not very origional are they. Seems they need to keep using other peoples ideas

July 26, 2012 at 11:31am



damn application already. Not only is this childish, but your readers here totally different. You made a mistake, just admit it and withdraw the Joshua Saul Li, stop comparing these cases to yours. They are are ridiculously uninformed of your actions.

July 28, 2012 at 1:25pm

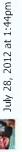


Adri Pendleton Josh, do you really have nothing better to do than harass the owner of a fishkeeping forum?

July 28, 2012 at 1:43pm via mobile



Stella Pratt Monster troll?



Joshua Saul Adri, have you investigated ANY of this or are you just believing everything you read?

July 28, 2012 at 11:09pm via mobile



Scott Hurley

GO Monster Fish Keepers.... I have banned all of Monster Asswipe energy bulling a group of people for having the word monster as part of their products from the lips of my family... Monster asswipes they are for name. Shame Shame Shame....

Share 1 July 26, 2012 at 6:27pm

\$\frac{1}{2}\$ 8 people like this.



Joshua Saul Once again, another person who did NOT READ the facts and thnks this is all about the word "Monster"

July 28, 2012 at 1:22pm



Stella Pratt get over yourself dude

July 28, 2012 at 1:27pm · 🖒 3



Scott Hurley OK fine The Letter M in such a way that it bothers the



applied for a class to sell shirts with the logo on it, totally unnecessary Joshua Saul Jeez, can people here READ? No one is saying he can't use the word monster or the m. Halready has the righ to do that. He Nd that's what started this.

July 28, 2012 at 11:06pm via mobile



Quincy Hansen

cook the time to desighn and make, not to mention the money he spent. I Li just keeps giving and giving. At ACA he brought over 600 shirts that he personaly think Li deserves better. I mean the most i have ecer herd him Hey yall, so I just wanted to say that Li is in no way shape or form trying asked for so little, and someone has the nerve to be so rude and hateful. as for is a little bit of support in this law suit between MFK and Monster to "Use this only for donations". Li has done so much for all of us and write a letter, post something on facebook, make a phone call, or take Energy. Is that really to much to ask? I mean all people have to do is the time to type a simple email and send it to Monster Energy. All of those take less than 5 minutes to do.

Anyways, Thanks Li for all you've done for all of us and the hobby.



3 people like this.



Bob Bishop

Josh..you are so misinformed...hope your life improves...

Share · July 28, 2012 at 1:35pm

∠ 2 people like this.



Adri Pendleton I wonder what it takes to make someone that cranky lol

July 28, 2012 at 1:42pm via mobile



paper and thinks Li is telling a story but doesn't supply his credentials Bob Bishop probably a paycheck....odd that he demands Li show to make the decision his opinion has any merit... July 28, 2012 at 1:44pm · 🖒 1



Adri Pendleton I hope he treats that kid in his picture better than

July 28, 2012 at 1:45pm via mobile • €5 2



Joshua Saul All I was asking is for Li to post the legal documents he was sent, it would make it a lot clearer to most of you what is going on. I actually offered him some advice originally but I was pretty clear that he had no legal strategy so I stopped.

July 28, 2012 at 6:26pm via mobile



Li Neoprodigy Then later you troll around this group... What happen to fish hobbyist helping each other

July 28, 2012 at 6:38pm via mobile • 🖒 1



Joshua Saul Li, your interview on Blue zoo was so full of lies, should I just send you some money because we're both in the fish hobby? Should I suspend my sense of reality and stop asking the questions? All I

asked you to do was to post the full documents and conversation you've

had with them and stop summarizing. July 28, 2012 at 6:43pm via mobile



Joshua Saul What does a paycheck have to do with it? I work outside of the aquarium industry if that is what you are asking. I have no financial stake in this.

July 28, 2012 at 6:47pm via mobile



Michael Dunagan You have no clue all the donations and support Li has given the hobby. It is sad that you are twisting this situation to attempt to ruin someones name who has done so much for the hobby. July 28, 2012 at 6:56pm : \$\frac{2}{3}\$?



Justin Seals Josh it's pretty clear your an employee of this coward energy drink corp and/or have some stake in it. If your not going to help this cause then leave... If you have no connection with monster energy then why are you here? Your not a supporter of MFK so kick rocks and find a different topic to troll........



Devin Biggs I have heard stuff like what Josh is saying before and it is usually best just explained off as sour grapes.

July 28, 2012 at 7:55pm ⋅ ₹3 3



Chris O'Leary

Some body needs to warn these poor bastards about them!



Monster Beverage Corporation: Do not sue Monster Fish Keepers for trademark infringement!

www.change.org

Monster Aquaria Network is made up of three aquarium hobby sites and their respective forums: MonsterFishKeepers.com, AquariaCentral.com, and...

July 17, 2012 at 3:58pm



Charity F. Jones Wow....talk about petty.

July 17, 2012 at 4:02pm



Terry Clements Never liked it anyway

July 17, 2012 at 4:50pm

Adam Reyome unliked



Kimberly Robertson never touched the stuff and now I will never

July 17, 2012 at 4:58pm



Sam Robinson

signed and re-shared the petition....I remember first seeing the drink a few years ago and thinking "Hey! They stole that from MFK!"

Share - July 17, 2012 at 1:24pm



Johnny Zanni A lot longer then MFK.

July 17, 2012 at 3:49pm via mobile



Johnny Zanni According to the page I ready MFK was started in 2005. Monster energy was founded in 1997.

July 17, 2012 at 3:53pm via mobile · €3 1



July 17, 2012 at 3:54pm



Johnny Zanni The beverages were launched in 2002. Still before MFK.

MFK.....but then I don't drink any of that crap.....coffee the original energy Sam Robinson I don't remember seeing it before being involved with

July 17, 2012 at 3:55pm



Johnny Zanni As far as I know the logo has always been the same.





'Gerald Griffin' The MFK logo reminds me of the scorpio sign.





Nck Hanan Monsters logo doesnt even have the same colors as MFKs logo

July 17, 2012 at 3:56pm : 🖒 1



Sam Robinson Even if it has been...the MFK M is not the same as the energy M..

July 17, 2012 at 3:56pm



Sam Robinson And they can't claim "M" as being theirs.....come on the English language owns the letter

July 17, 2012 at 3:58pm



Nck Hanan Monster just likes going after the small guys, they went after vermontster in 2009 too

July 17, 2012 at 4:01pm



Bill Brissette

It's nice to see over 1300 members here, but we've still only got 900 signatures! Sign the petition to support MFK against Monster Energy Drinks! http://chn.ge/NQyQ98



Monster Beverage Corporation: Do not sue Monster Fish Keepers for trademark infringement!

www.change.org

Monster Aquaria Network is made up of three aquarium



4 people like this.



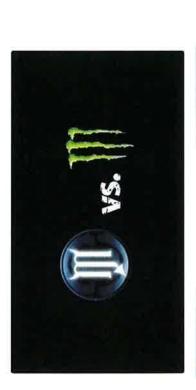
Ryan Bing

LiveAquaria is going to help in anyway they can (at least on Twitter).

Share July 17, 2012 at 3:00pm



•



Petitioning Monster Energy Company >

Monster Energy Company: Stop MonsterFishKeepers.com! Trademark Bullying

Display my signature on Change org By signing you accept Change org's ferms of service and privacy policy.



Petition by Nicole Putnam Ocala, FL Monster Aquaria Network is made up of three aquarium hobby sites and their respective forums: MonsterFishKeepers.com,

AquariaCentral.com, and Aquatic-Photography.com.

The Monster Fish Keepers 74 Class 38 trademark "M" has been registered with the

Outside U.S.? 1.310 NEEDED Why is this important to you? Sign this petition Sign > with 8,690 supporters Street Address (Optional) First Name Last Name Zio Code Email State Q Q

Recent signatures

4 Preston Player SUNSET, UT 9

Ben Jones LOUGHTON, GB



Petitioning Monster Energy Company ~

Monster Energy Company: Stop MonsterFishKeepers.com! Trademark Bullying



Monster Aquaria Network is made up of three aquarium hobby sites and their respective forums: MonsterFishKeepers, com,

AquariaCentral.com, and Aquatic-Photography com.

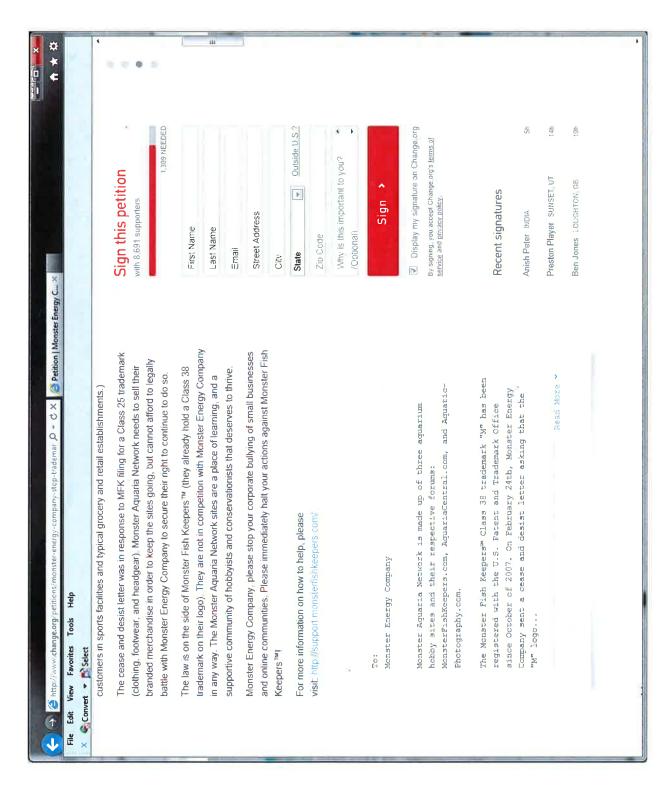
Monster Energy Company sent a cease and desist letter asking that the "M" logo be merchandise is a source of revenue for Monster Aquaria Network which defrays the The Monster Fish Keepers TM Class 38 trademark "M" has been registered with the U.S. Patent and Trademark Office since October of 2007. On February 24th, dropped from clothing, accessories and stickers. Along with advertising, this cost of maintaining the sites.

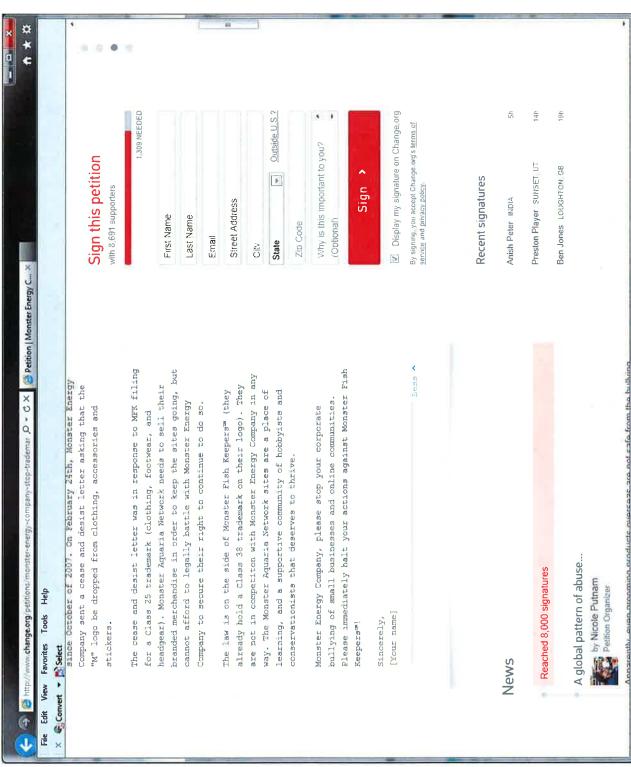
unlikely that consumers would mistake a brand marketed to the keepers of large fish in specialty online sites and aquarium stores, for a brand marketed to regular infringement and would cause customers confusion with their own MONSTER™ MONSTER ENERGY®, and MONSTER "Claw M®" registered trademarks. (It is customers in sports facilities and typical grocery and retail establishments.) Monster Energy Company feels that the "M" logo constitutes trademark

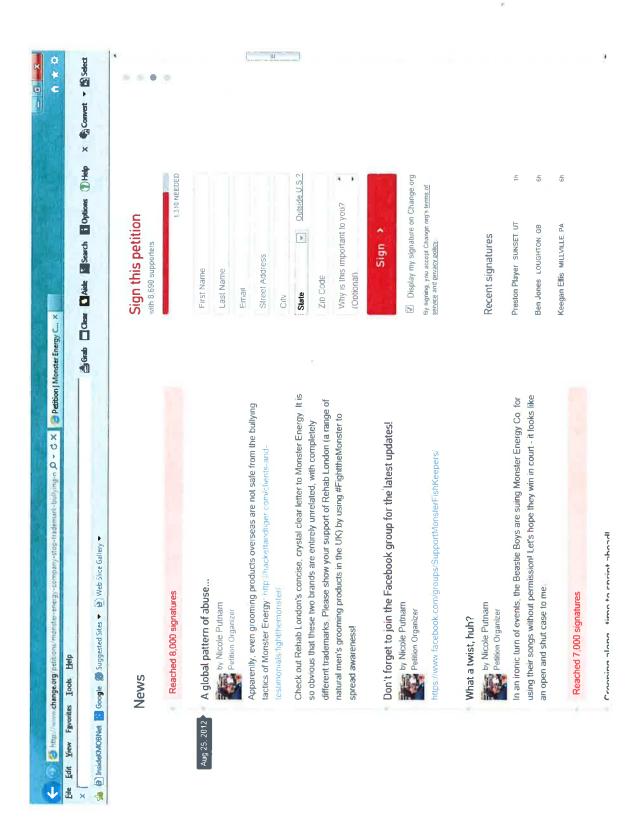
The cease and desist letter was in response to MFK filing for a Class 25 trademark branded merchandise in order to keep the sites going, but cannot afford to legally (clothing, footwear, and headgear), Monster Aquana Network needs to sell their battle with Monster Energy Company to secure their right to continue to do so.

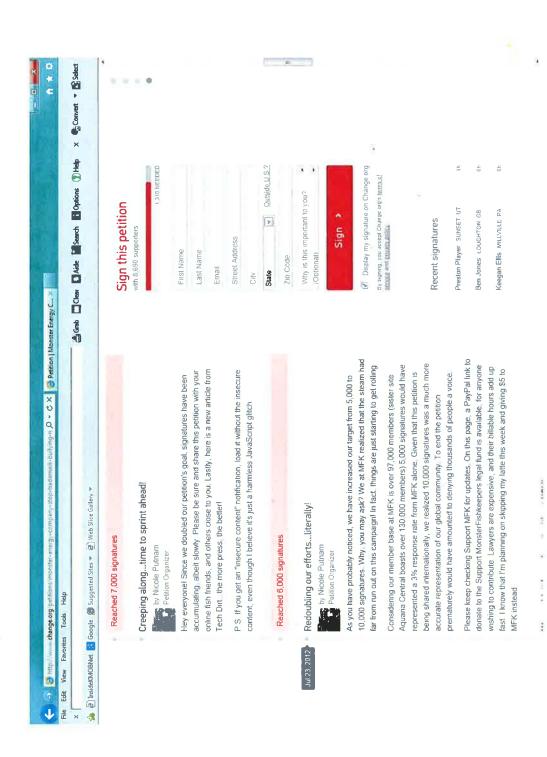
trademark on their load). They are not in competition with Moneter Energy Company The law is on the side of Monster Fish Keepers™ (they already hold a Class 38

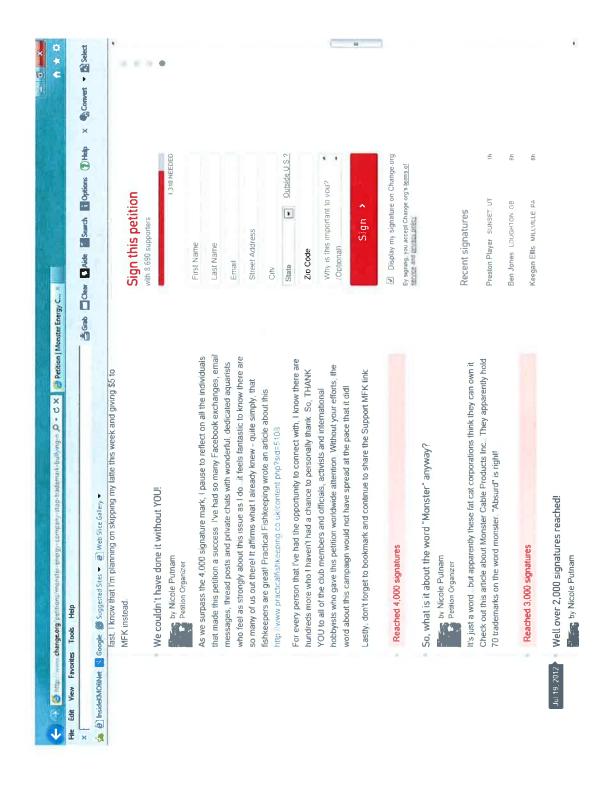
with 8,690 supporters	1,310 NEEDED	First Name	Last Name	Email	Street Address	City	State Outside U.S.?	Zin Code	Why is this important to you? (Optional)	Sign >	Display my signature on Change org	By signing, you accept Change org's terms of service and privacy policy.	Recent signatures	Preston Player SUNSET UT	Ben Jones LOUGHTON GB 6h	Keegan Ellis MILLVILLE PA 6h

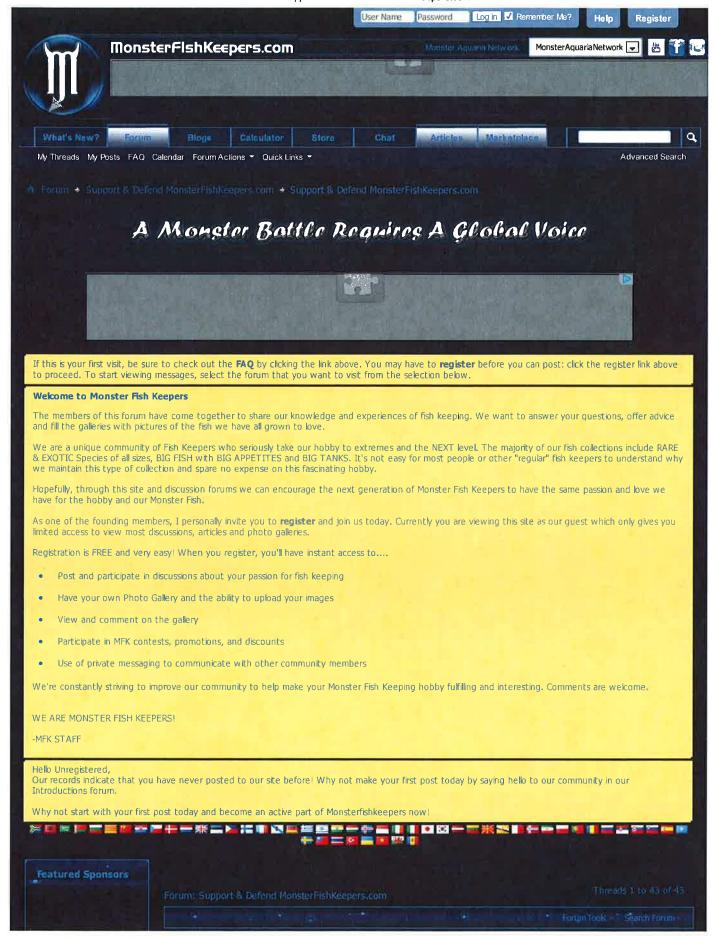


















MonsterAquariaNetworkcom





March 14 🔊

6/4/13

THE CALL

110.000

Its Koming! East Coast Monster Fish Konvention!!!! www.EastCoastMonsterFish.com March 8 🚱

MonsterAquariaNetwork.com shared Li Neoprodigy's status.

January 25 🐒

It's Coming!

MonsterAquariaNetwork.com shared Li Neoprodigy's photo.

 $\frac{1}{2}$

Like · Comment · Share

Its Koming! East Coast Monster Fish Konvention!!!!! FREE Beer @ Saturday Night AND All Day Sunday Auctions and FREE Saturday breakfast!!! www.EastCoastMonsterFish.com

Speakers, Great Talk Great Friends and Monster FUN! stay tune

for more information!

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coming! September 20-22, 2013! clear your calendar.... Great

It's Official! Edison, NJ.... are you ready! Monster event is





store.monsteraquarianetwork.com

STATIC JANK CIINGS

Like · Comment · Share

MonsterAquariaNetwork.com shared a link. July 19, 2012 😵

Support, Sign & Spread:

http://www.change.org/petitions/monster-beverage-corporationdo-not-sue-monster-fish-keepers-for-trademark-infringement



Monster Beverage Corporation: Do not sue Monster Fish Keepers for trademark infringement! www.change.org

Monster Aquaria Network is made up of three aquarium hobby sites and their d3 Q1 ₽1

EAST COAST

MONSTERFISHKEEPERS AND EASTCOASTCICHLIDS PRESENTS:

Monster fish Konvention

SHERATON HOTEL, PARSIPPANY, NEW JERSEY

SEPTEMBER 20 - 22, 2013

René Krůter

LAKE TANGANYIKA CICHLIDS HULSBERG, NETHERLANDS

L-NUMBER PLECOS

INGO SEIDEI BERLIN, GERMANY CHICAGO, ILLINOIS PRIMITIVE FISHES

SOLOMON DAVID

FRESHWATER STINGRAYS BANTA BARBARA, CALIFORNIA RICHARD ROSS

LAKE MALAWI CICHLIDS SPENCER JACK **URUGUAYAN FISHES** WINNIPEG, CANADA

FRESHWATER YORK, PENNSYLVANIA INVERTEBRATES RACHEL O'LEARY

RARE FISH AUCTIONS . VENDOR ROOMS

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₽25

Monster Aquaria Network.com shared MonsterFishKeepers.com's photo. July 25, 2012 🔊

Support & Share!

Support & Share:

The Blog: http://support.monsterfishkeepers.com/

energy-company-stop-trademark-bullying-monsterfishkeepers-The petition: http://www.change.org/petitions/monster-

The Image: https://sphotos-a.xx.fbcdn.net/hphotos-

3/10

Like · Comment · Share

snc6/283641_10150987008643212_706085905_n.jpg?dl=1

△ 3 people like this.



ridiculous. Nobody in their right mind is going to confuse the 2 logos. My goodness. I love Monster fish keepers keepers!!! Jenny Garza Adkison I signed the petition. This is just July 20, 2012 at 5:36am · Like

Redacted

Write a comment...



MonsterAquariaNetwork.com shared a link.

July 17, 2012 🚯

http://support.monsterfishkeepers.com/ Support & Spread the Words:

Support Monster Fish Keepers | We are being sued for copyright infringement. Please Help.

support.monsterfishkeepers.com

On February 24, Monster Energy Company sent a cease & desist letter to MonsterFishKeepers, and the MonsterFishKeepers "M" symbol in MonsterFishKeepers.com in regards to their use of the marks

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MonsterAquariaNetwork.com shared a link.

January 25, 2012 🕸



http://itunes.apple.com/us/app/monsteraquarianetwork/id495494 026?mt=8



App Store - MonsterAquaria Network

itunes.apple.com

Read reviews, get customer ratings, see screenshots, and learn more about MonsterAquariaNetwork on the App Store. Download MonsterAquariaNetwork and enjoy it on your iPhone, iPad, and iPod touch.

MonsterFishKeepers.com is a forum dedicated to the care&keeping Monster Energy Corporation because We are being trademark bullied by of fish, especially those of "monster" size/personality. our logo is an M, and the word

Like · Comment · Share



♣ 6 people like this.

Jay Doyle They need to get a life! I totally support you. Jay Doyle They need to get a life! I total July 25, 2012 at 5:08pm via mobile - Like

Redacted

Write a comment...



MonsterAquariaNetwork.com shared a link. January 13, 2012 🐯

Get the MonsterAquariaNetwork app today!!!! --->

https://market.android.com/details?

id=com.quoord.tapatalkmonster.activity

5/10



Like · Comment · Share

6/4/13



January 3, 2012 🔊

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Monster Aquaria Network Mobile App www.GetMonsterApp.com

Monster Aquarian Network Mobile App

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MonsterAquariaNetwork.com

September 28, 2011 🐒

company... we are now bigger and more monster than ever! YES we are back...we finally migrated to a new hosting

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3 people like this.

3 □ 1

Justin Pfaff hey whats the deal? istill cant get anything buy spam from any of the pages!

October 24, 2011 at 9:18pm · Like

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market, android, com

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http://www.thmagazine.com/holidaypromo11/



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July 27, 2010 😵

http://www.youtube.com/watch?v=exKYyS_SRG8



CCA Does ACA

Washington, DC area will be hosting the American Cichlid Association's Annual Convention in 2011. This promotional The Capital Cichlid Association in the video was unveiled at the 2010 ACA

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<u>₽</u>25

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http://www.monsterfishkeepers.com/forums/showthread.php? t=319566

Happy Birthday Monsterfishkeepers!: 5 Year in the making! - MonsterFishKeepers.com

www.monsterfishkeepers.com

Happy Birthday Monsterfishkeepers! : 5 Year in the making! The Lounge

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MonsterM Tattoo!!! -->

http://www.monsterfishkeepers.com/forums/showthread.php? t=310774

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March 1, 2010 🚯

VOTE -> Make Your Fish Famous Photo Contest Sponsored by Hikari Sales USA MFK Members: http:// www.monsterfishkeepers.com/forums/showthread.php?t=312224 AC Members: http://www.aquariacentral.com/

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www.aquariacentral.com

November 6, 2010 at 12:09am · Like

Redacted Write a comment...

Allan Bacani i like that man

TFH Magazine Ad: April 2010 Issue Photo Gallery



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February 16, 2010 🏟

http://www.monsterfishkeepers.com/forums/showthread.php? t=304329



Make Your Fish Famous Photo Contest Sponsored by Hikari Sales USA, Inc -

http://www.monsterfishkeepers.com/forums/showthread.php?

What is a JDM tank? Are you "wow" by it? check thread and

comment ->

t=305488

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Monster Aquaria Network.com created an event. February 4, 2010



Invertebrates by Msjinkzd Open House

70 Catalina Drive, Mount Wolf, PA 17347 April 17, 2010 at 2:00pm



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January 31, 2010 🐿

Monster Aquaria Net

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MFK Members:

http://www.monsterfishkeepers.com/forums/showthread.php?

t=304329

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t=218110

APF Members: http://www.aquatic-

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That Fish Place Meet: 2010

237 Centerville Rd, Lancaster PA, 17603 April 16, 2010 at 10:00am

🔳 Join · 2 people went



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MFK SoCal 2010: 5th Annual Meet: August 7, 2010:

http://www.monsterfishkeepers.com/forums/showthread.php? t = 304156

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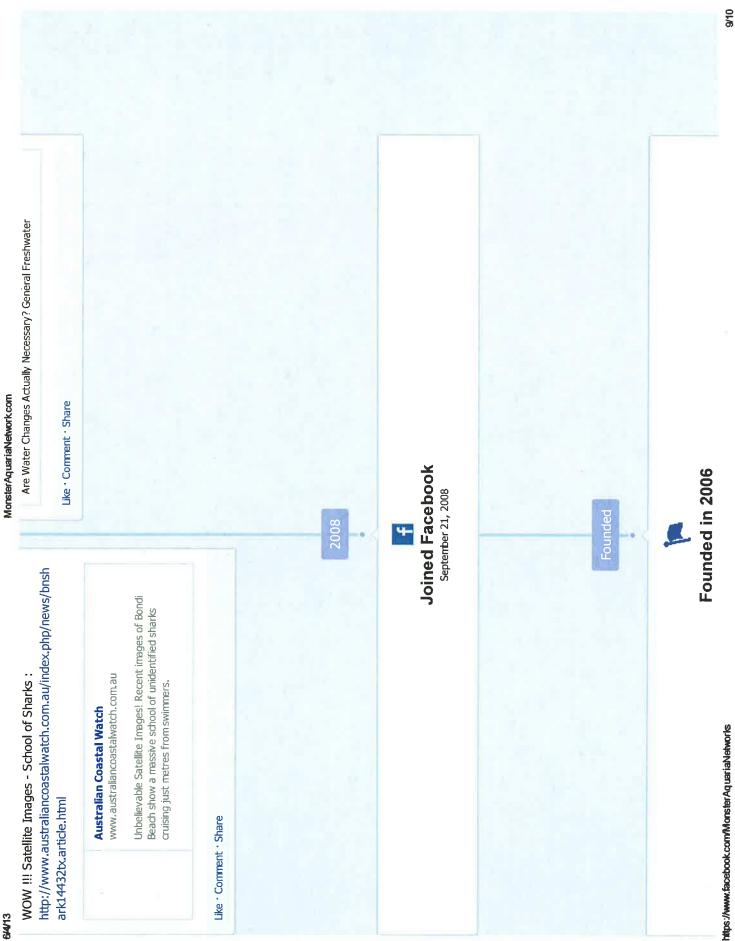
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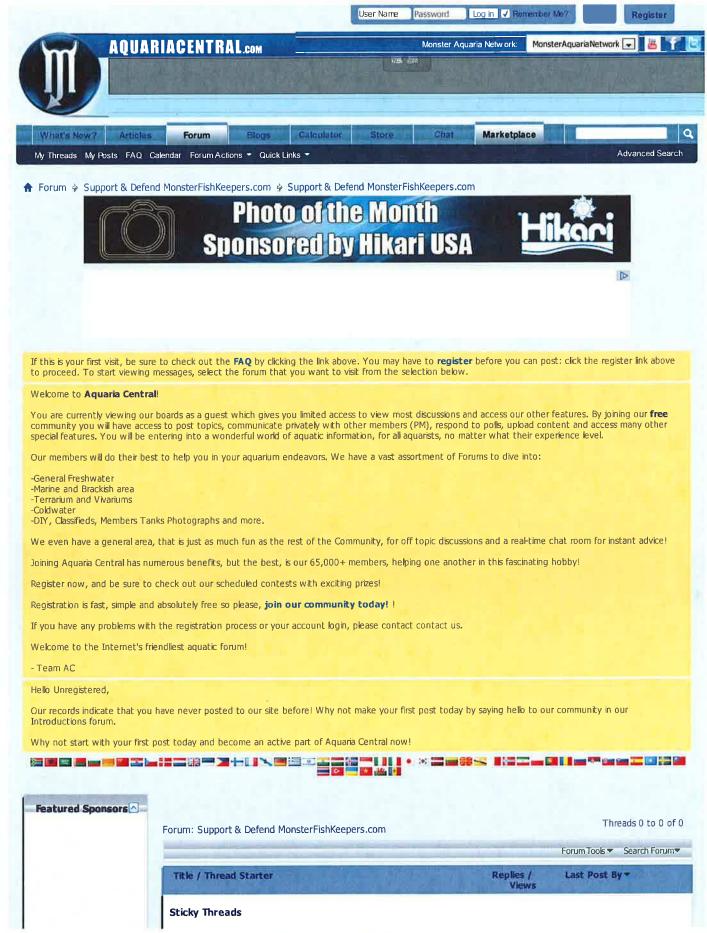
Question of the day:

Are Water Changes Actually Necessary?:

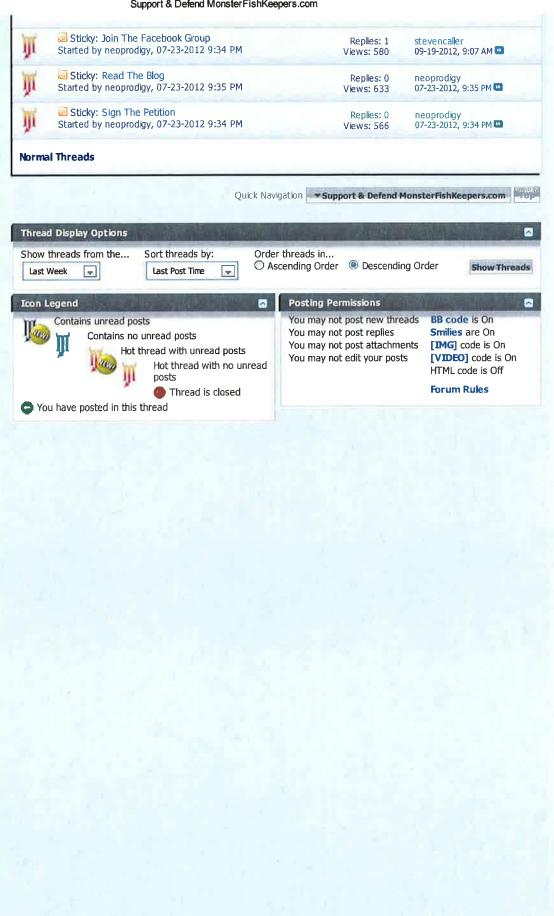
http://www.aquariacentral.com/forums/showthread.php? t=217584 Are Water Changes Actually Necessary? - Aquaria Central www.aquariacentral.com



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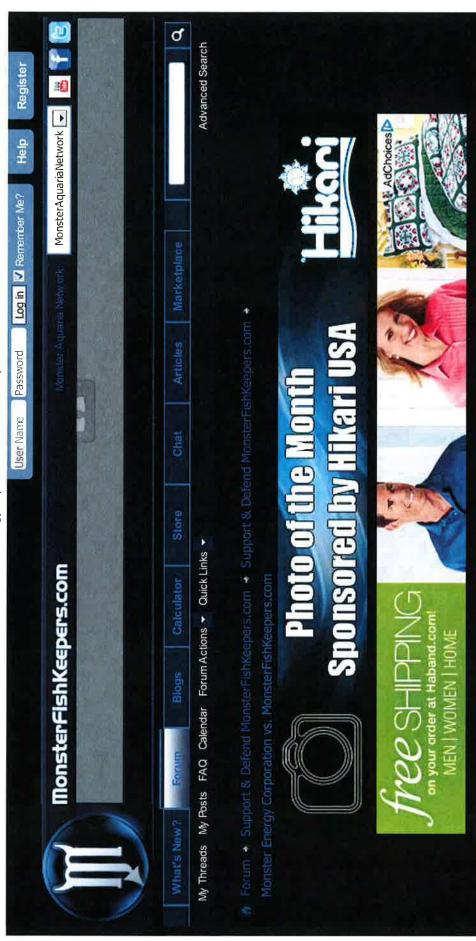












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The members of this forum have come together to share our knowledge and experiences of fish keeping. We want to answer your questions, offer advice and fill the galleries with pictures of the fish we have all grown to love.

EXOTIC Species of all sizes, BIG FISH with BIG APPETITES and BIG TANKS. It's not easy for most people or other "regular" fish keepers to understand why we We are a unique community of Fish Keepers who seriously take our hobby to extremes and the NEXT level. The majority of our fish collections include RARE & maintain this type of collection and spare no expense on this fascinating hobby. Hopefully, through this site and discussion folums we can encourage the next generation of Monster Fish Keepers to have the same passion and love we have for the hobby and our Monster Fish. As one of the founding members, I personally invite you to register and join us today. Currently you are viewing this site as our guest which only gives you limited access to view most discussions, articles and photo galleries.

Registration is FREE and very easy! When you register, you'll have instant access to....

- Post and participate in discussions about your passion for fish keeping
- Have your own Photo Gallery and the ability to upload your images
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- Use of private messaging to communicate with other community members

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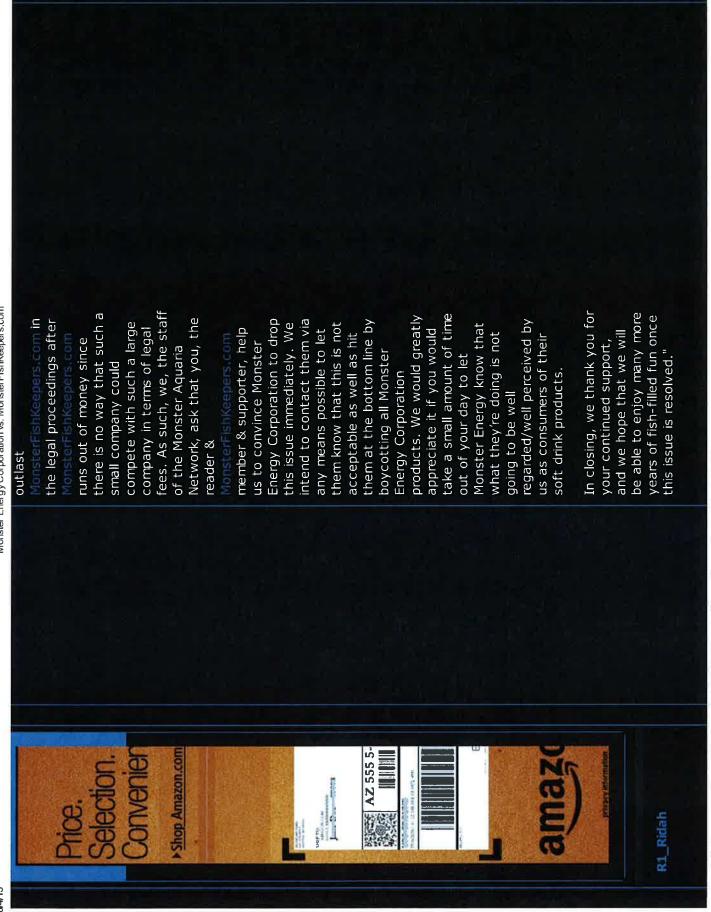
sergroup: MFK members
eal Name: Nick
hin Bate; Sep 2011
acation: Plumes Lake; California
set Activity: 04-23-2013 12:35 AM
osts: 3,207

This is kind of old news but I found it interesting, I never heard of this news until now. What are your thoughts about this? I think its pretty stupid, just because this website has "Monster" in the name they think it would cause confusion with their own products?

"On February 24, Monster Energy Company sent a cease & desist letter to MonsterFishKeepers.com in regards to their use of the marks MonsterFishKeepers, and the MonsterFishKeepers "M" symbol in connection with clothing, accessories,





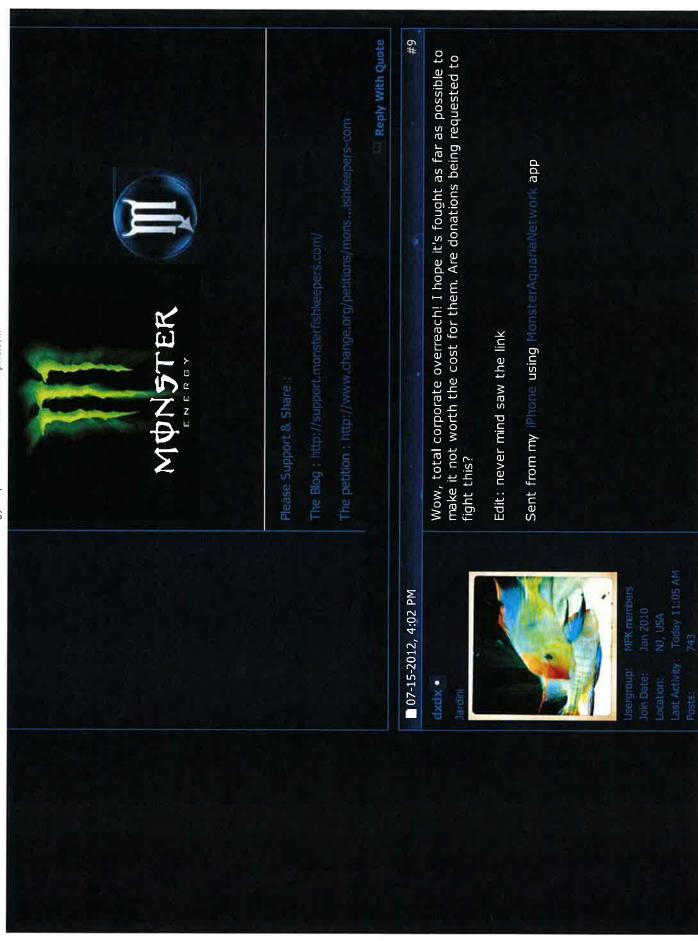




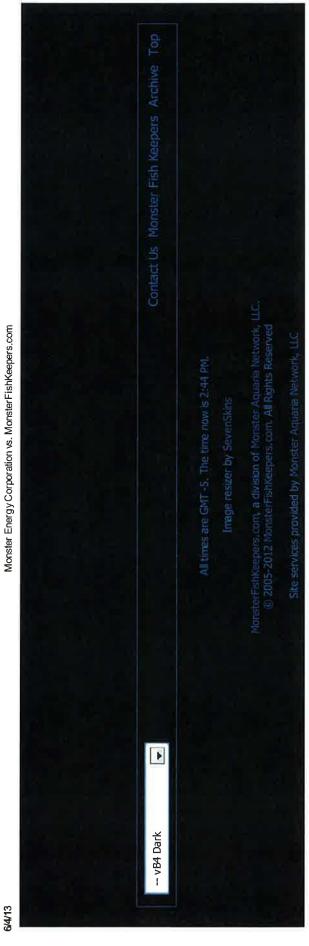














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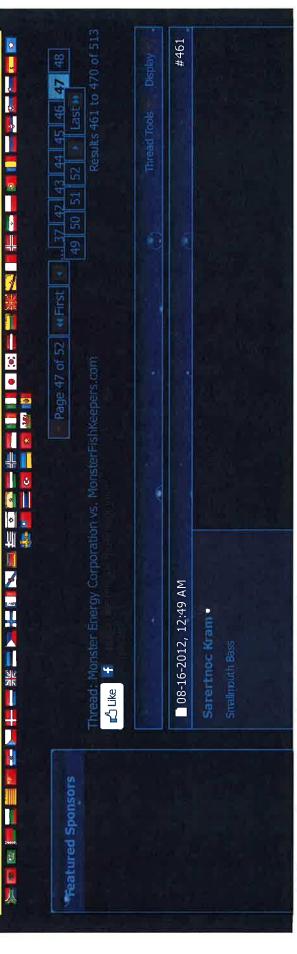
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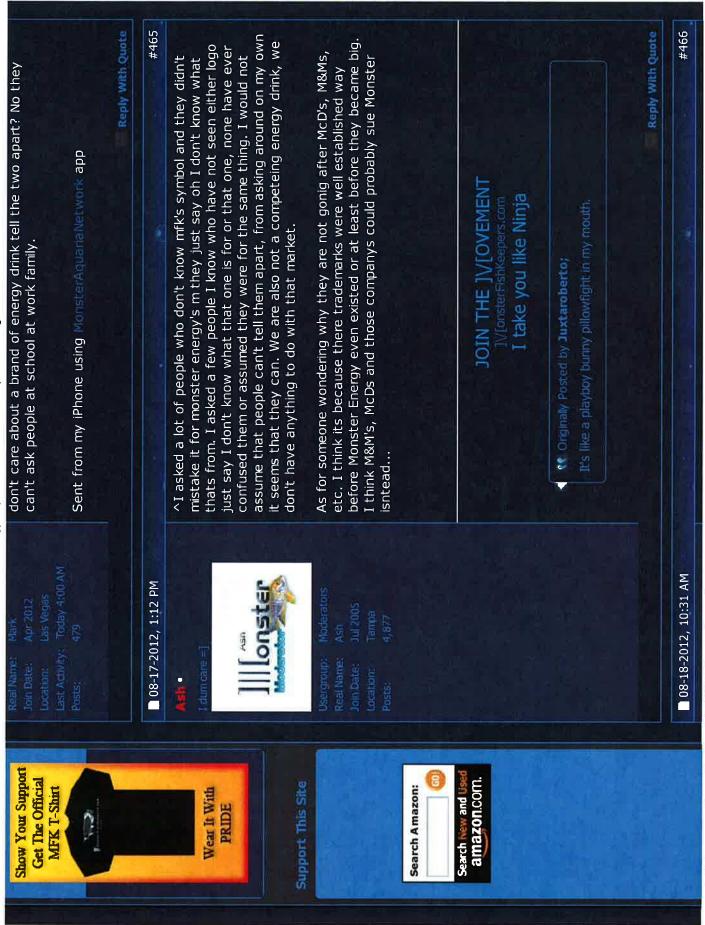
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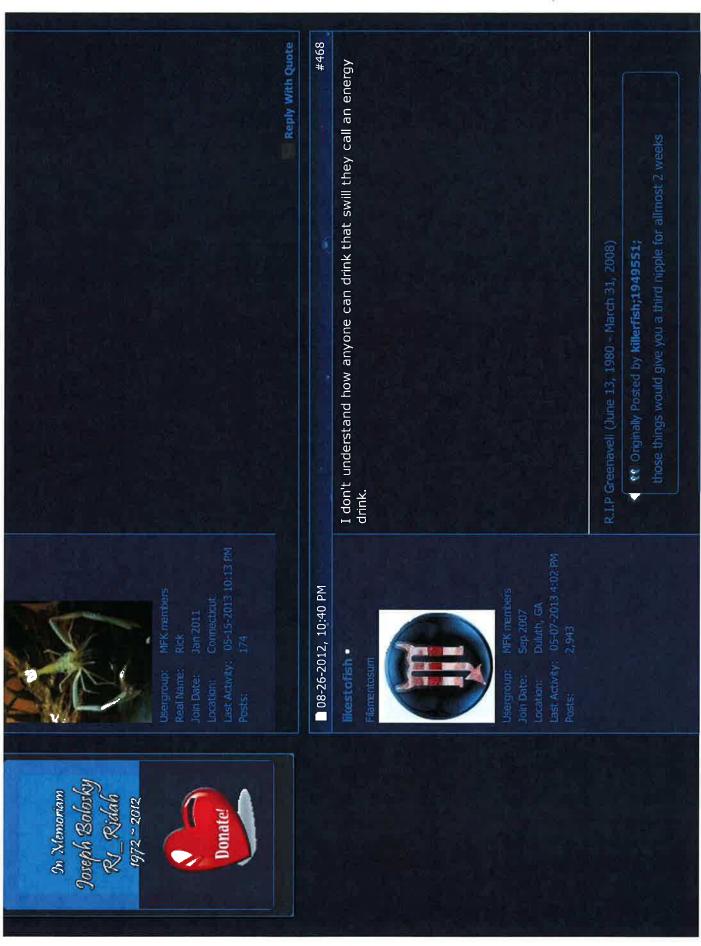








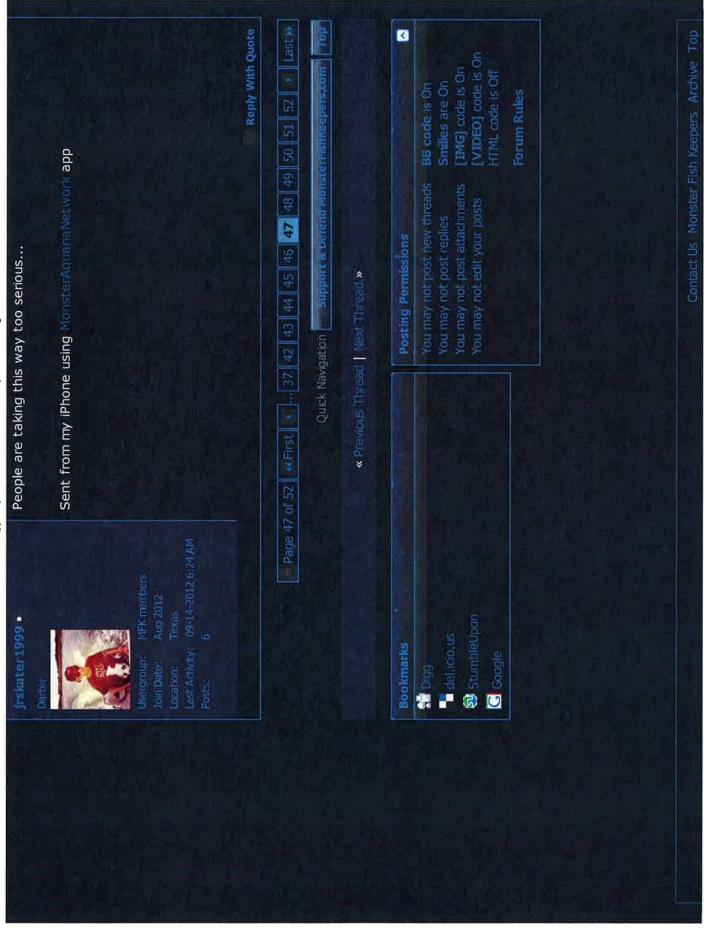




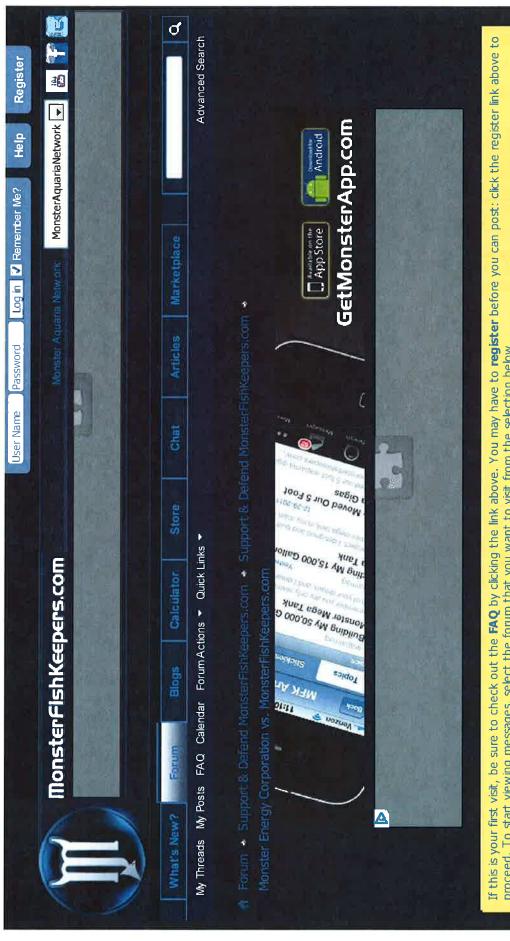


www.monsterfishkeepers.com/forums/showthread.php?490145-Monster-Energy-Corporation-vs-MonsterFishKeepers-com/page47

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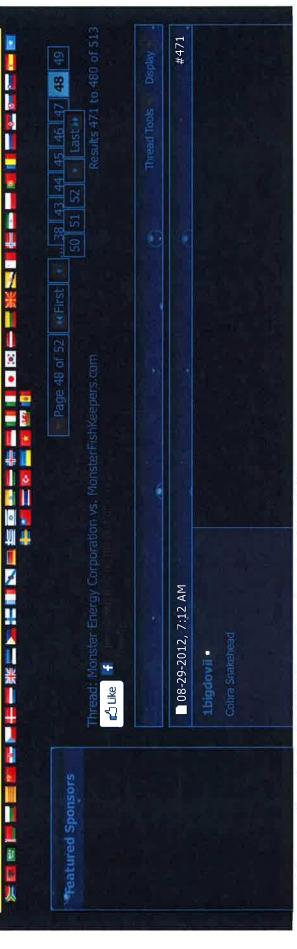
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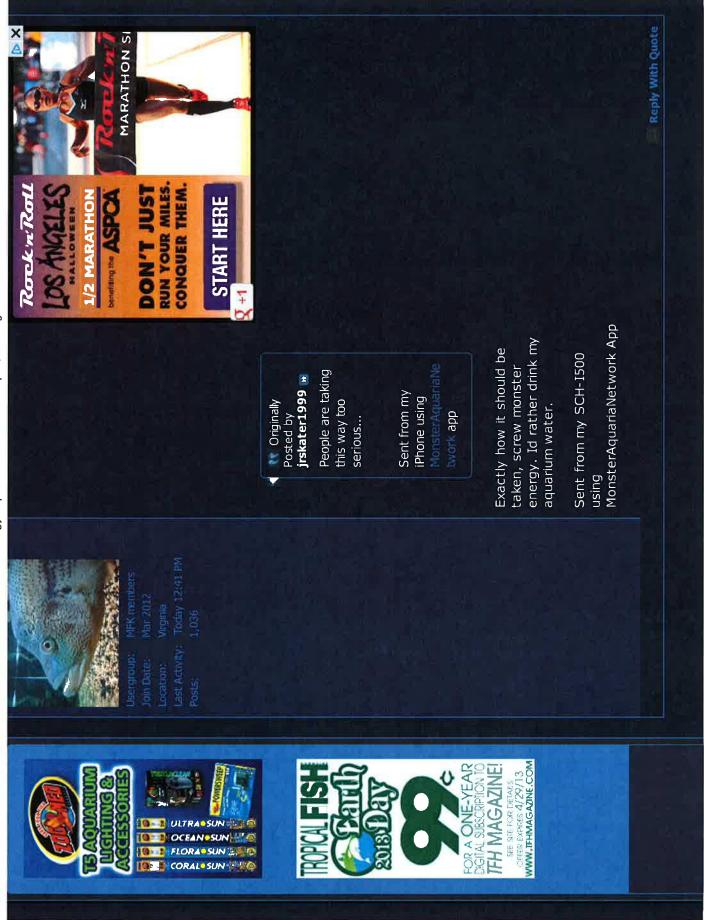
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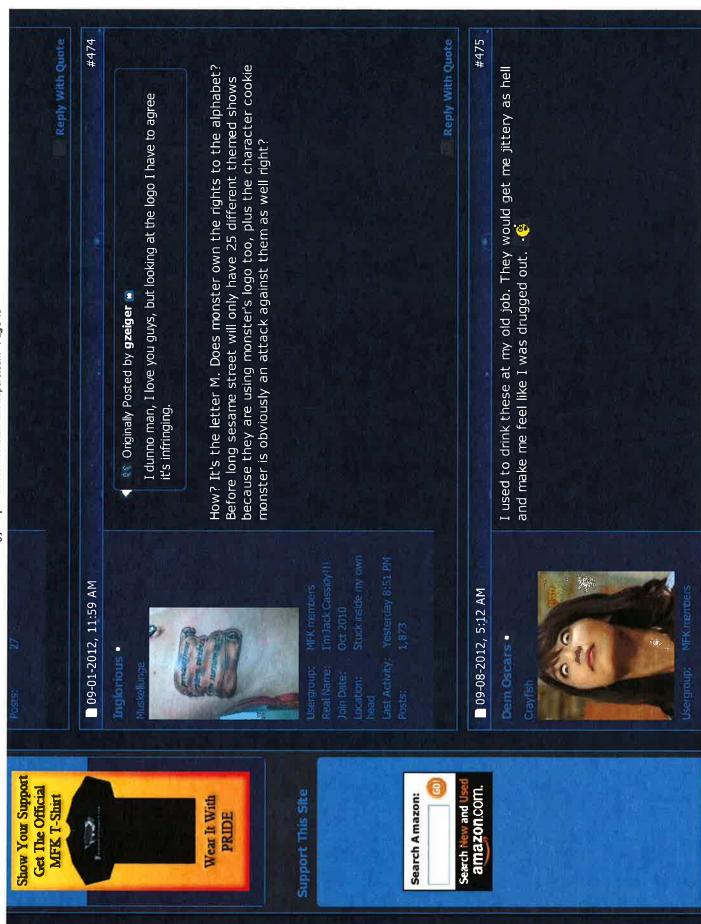
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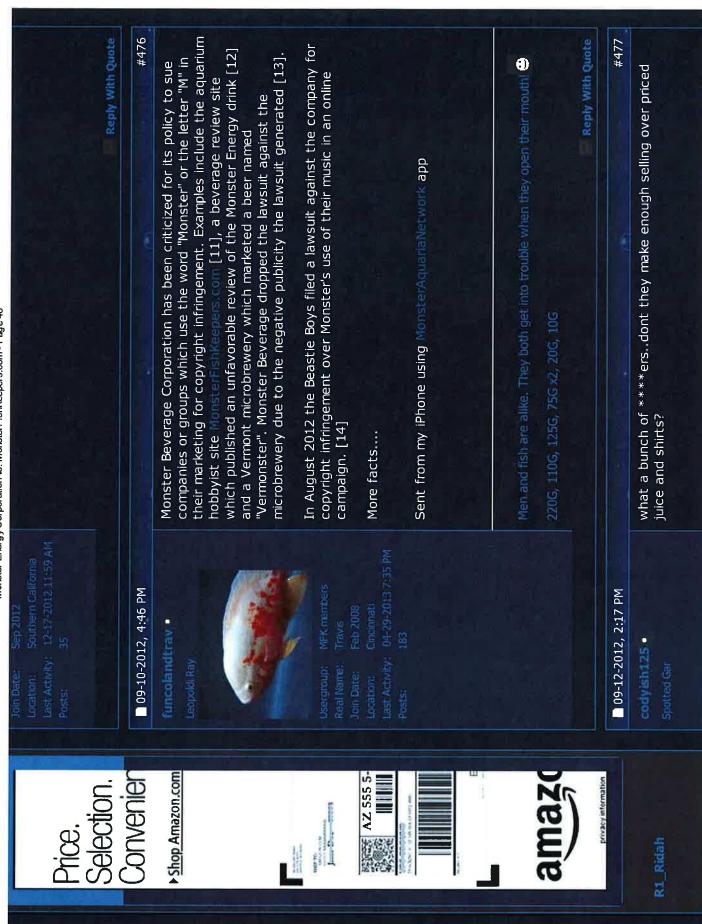
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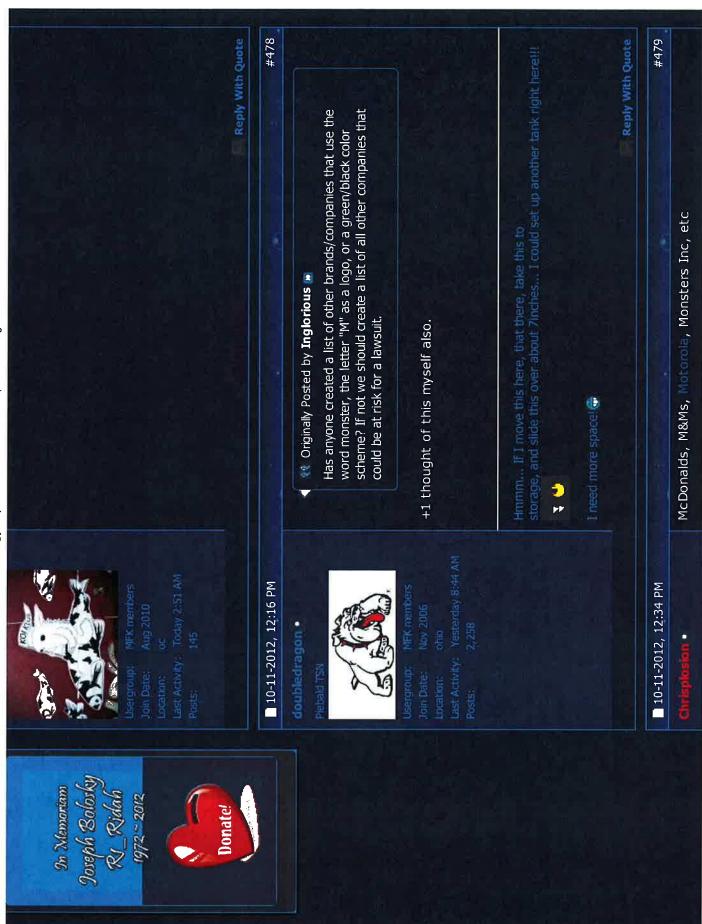


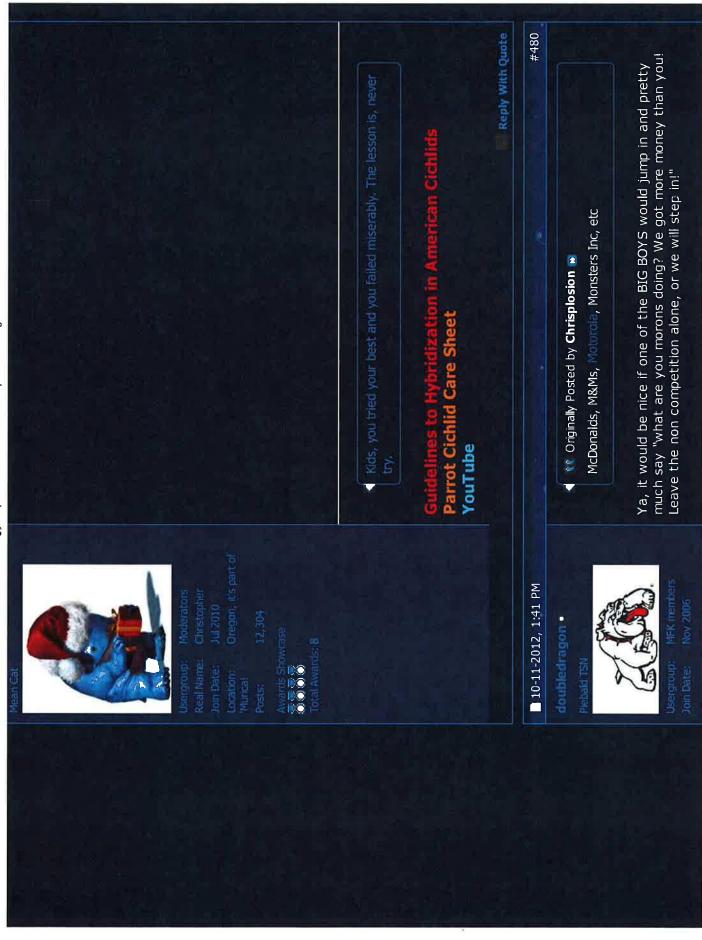


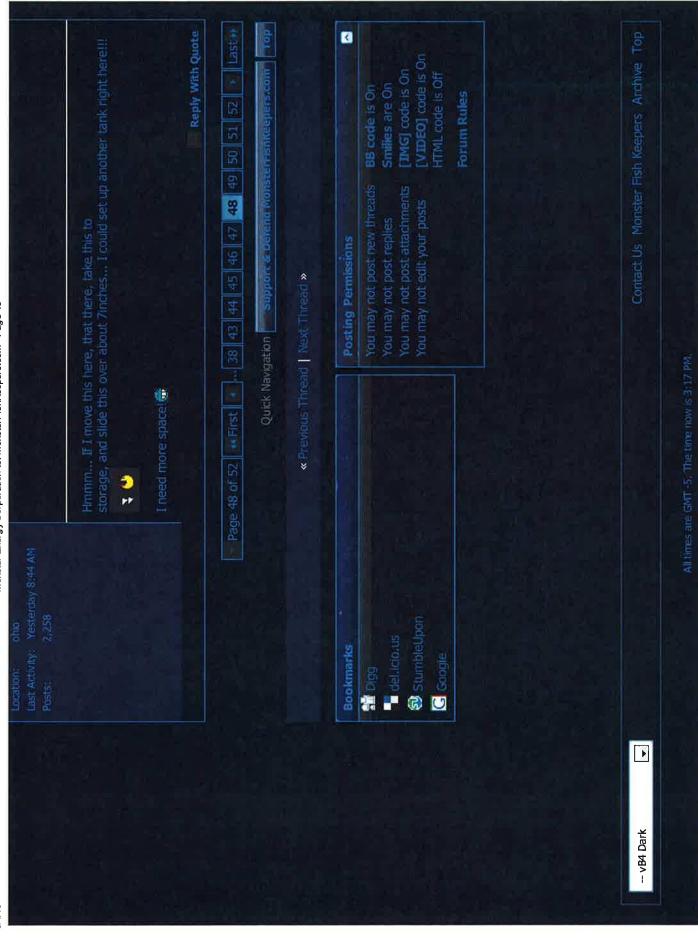








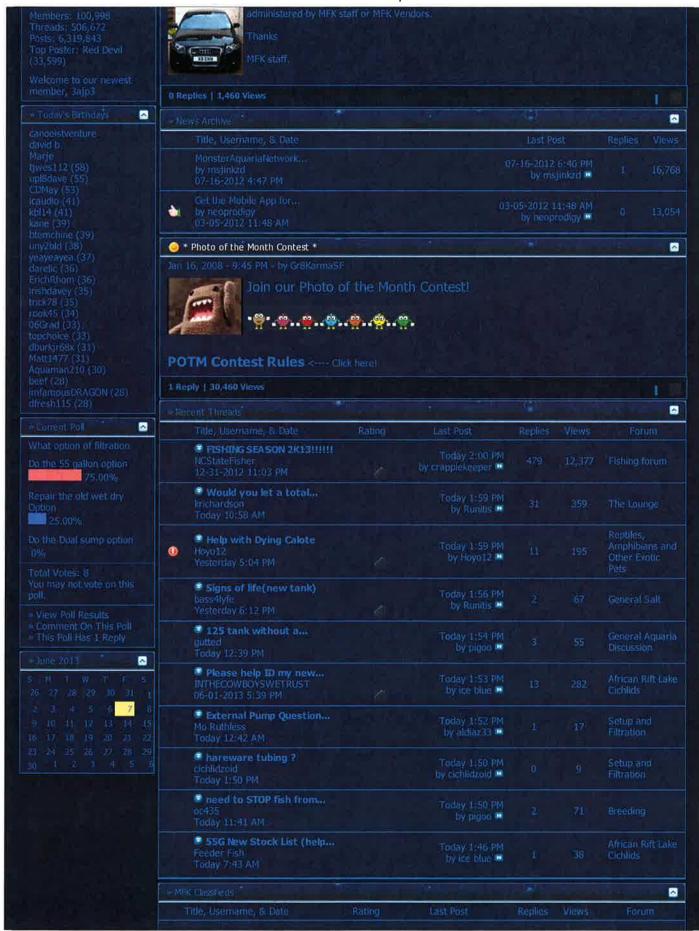




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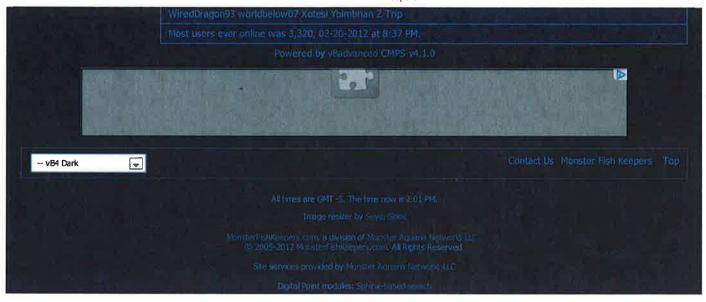




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CONQUER THEM

<u>Start Here</u>

Welcome to Aquaria Central!

You are currently viewing our boards as a guest which gives you limited access to view most discussions and access our other features. By joining our free community you will have access to post topics, communicate privately with other members (PM), respond to polls, upload content and access many other special features. You will be entering into a wonderful world of aquatic information, for all aquarists, no matter what their experience level.

Our members will do their best to help you in your aquarium endeavors. We have a vast assortment of Forums to dive into:

- -General Freshwater
- -Marine and Brackish area
- -Terrarium and Vivariums
- -Coldwater
- -DIY, Classifieds, Members Tanks Photographs and more.

1/2 MARATHON

We even have a general area, that is just as much fun as the rest of the Community, for off topic discussions and a real-time chat room for instant advice!

Joining Aquaria Central has numerous benefits, but the best, is our 65,000+ members, helping one another in this fascinating hobby!

Register now, and be sure to check out our scheduled contests with exciting prizes!

Registration is fast, simple and absolutely free so please, join our community today! !

If you have any problems with the registration process or your account login, please contact contact us.

Welcome to the Internet's friendliest aquatic forum!

- Team AC

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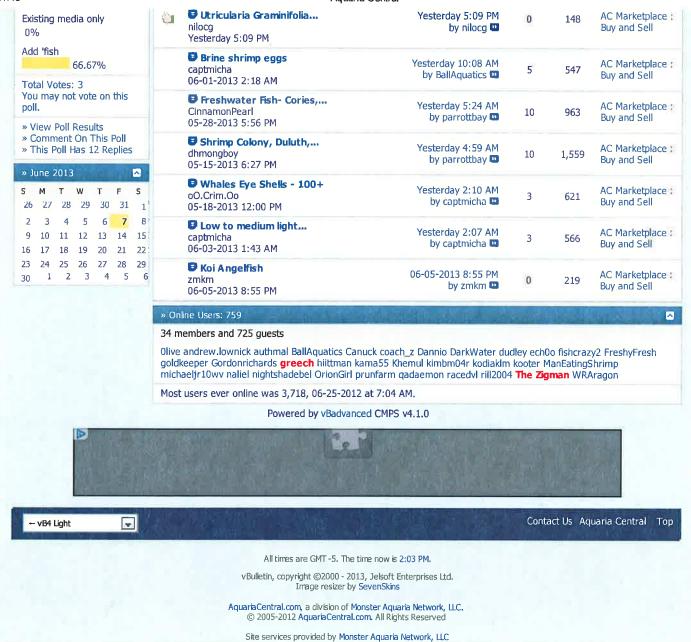
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0	● 112G Planted Show Tank TheFishBoss97 05-29-2013 11:50 PM	<u>a</u>	Today 10:43 AM by plantbrain D	21	1,111	Planted Aquariums	
	■ Nymph in Shrimp Tank wmc_09 05-30-2013 6:01 PM		Today 9:05 AM by OrionGirl	7	656	Freshwater Invertebrates	
	Hi guys. konstargirl 06-02-2013 4:48 PM		Today 8:55 AM by konstargirl	9	535	Freshwater Newbie Forum	
	Recycling live sand for XanAvaloni Today 2:02 AM		Today 7:07 AM by OrionGirl	1	179	General Freshwater	
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	Title, Username, & Date	Rating	Last Post	Replies	Views	For	ım
	♥ Olive Nerites WRAragon 05-27-2013 7:51 PM	æ	Today 8:33 AM by WRAragon	18	1,696	AC Marke Buy and S	
9	Planted driftwood, DarkWater 06-01-2013 12:40 PM	<u>a</u>	Today 8:30 AM by jlennonW	22	1,506	AC Marke Buy and S	
	38 gal and 20 gal long ShadowBeast 05-10-2013 6:28 PM	Q.	Today 4:41 AM by ShadowBeast •	24	3,472	AC Marke Buy and S	

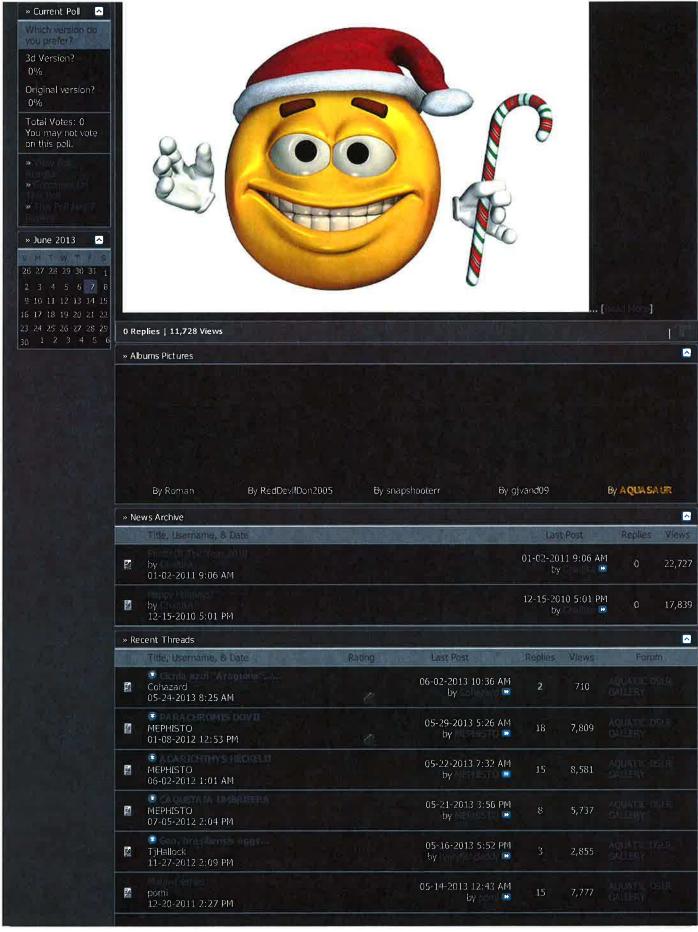
6/7/13 Aquaria Central



3/3



www.aq uatic-photography.com 1/4

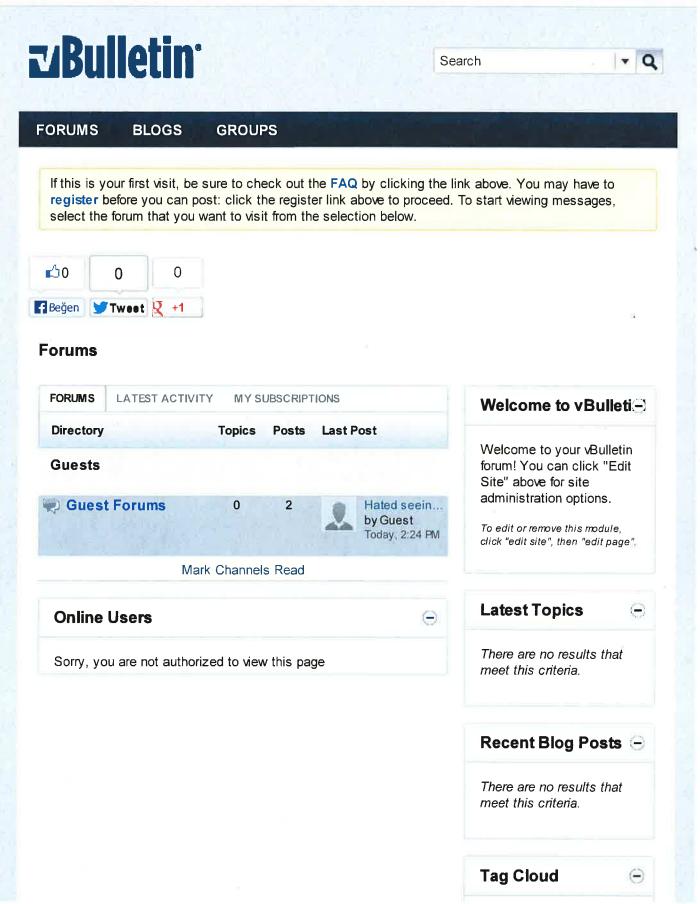


www.aquatic-photography.com 2/4



www.aquatic-photography.com 3/4

ite saylosi provided by Monster Aquaria Helwork, LLC



There are no tags yet.

Default vB5 Style

HELP | CONTACT US

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EAST COAST

MONSTER FISH KONVENTION

SHERATON HOTEL, PARSIPPANY, NEW JERSEY SEPTEMBER 20 - 22, 2013

René Krůter

HIR SEEDO, NETWERLANDS

LAKE TANGANYIKA CICHLIDS

RICHARD ROSS

SANTA BARBARA, CALIFORNIA FRESHWATER STINGRAYS

SPENCER JACK

IPEG, CANADA LAKE MALAWI CICHLIDS URUGUAYAN FISHES

INGO SEIDEL REGUM, GERMANY

L-NUMBER PLECOS

SOLOMON DAVID

CHICAGO, ILLINOIS PRIMITIVE FISHES

RACHEL O'LEARY

YORK, PENNSYLVANIA FRESHWATER INVERTERRATES

naga

RARE FISH AUCTIONS . VENDOR ROOMS

Like Comment Share

36





AUG 2012 Newsletter

Monster Aquaria Network STILL needs your help! Some of you may have seen our recent ad in Tropical Fish Hobbyist Magazine advertising our plight. The fight is far from over!

As many of you know, Monster Energy Company has issued a cease and desist letter which is trying to limit our use of the letter "M" in our logo, as well as the word "MonsterFishKeepers" in our name in rel... See More

Like Comment · Share

🖒 13 🗔 2



Aquaria Central.com shared MonsterFishKeepers.com's photo.

July 25, 2012 🍪

Support & Share!

Support & Share:

The Blog: http://support.monsterfishkeepers.com/

The petition: http://www.change.org/petitions/monsterenergy-company-stop-trademark-bullying-monsterfishkeepers-

The Image: https://sphotos-a.xx.fbcdn.net/hphotossnc6/283641_10150987008643212_706085905_n.jpg?dl=1

AquariaCentral.com

It's Coming!

It's Official! Edison, NJ.... are you ready! Monster event is coming! September 20-22, 2013! clear your calendar.... Great Speakers, Great Talk Great Friends and Monster FUN! stay tune for more information!

Like Comment Share





AquariaCentral.com shared a link.

October 17, 2012 49

Catfish Convention: Oct 18~21: This weekend: Be there: http://catfishcon.com/



The All-Aquarium Catfish Convention | **Home**

catfishcon.com

Official Website for the All-Aquarium Catfish Convention.

Like Comment Share

€ 3



AquariaCentral.com shared a link.

August 30, 2012 🚯

Static Tank Decals are back -->

http://store.monsteraquarianetwork.com/index.php? page=shop.browse&category_id=16&option=com_virtuemart&Ite mid=1



Static Tank Clings

store, monsteraquarianetwork, com

Like · Comment · Share

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AquariaCentral.com shared a link.

July 19, 2012 🚯

Support, Sign & Spread:

http://www.change.org/petitions/monster-beverage-corporationdo-not-sue-monster-fish-keepers-for-trademark-infringement



Monster Beverage Corporation: Do not sue Monster Fish Keepers for trademark infringement!

www.change.org

Monster Aquaría Network is made up of three aquarium hobby sites and their

Like Comment Share

2 □ 1





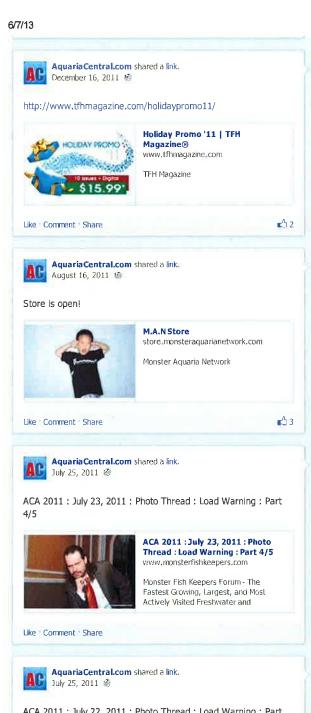
http://support.monsterfishkeepers.com/

AquariaCentral.com shared a link.

Support & Spread the Words:

Support Monster Fish Keepers | We are being sued for copyright infringement. Please Help.





ACA 2011 : July 22, 2011 : Photo Thread : Load Warning : Part ACA 2011 : July 22, 2011 : Photo Thread: Load Warning: Part 2/5



www.monsterfishkeepers.com Monster Fish Keepers Forum - The

Fastest Growing, Largest, and Most Actively Visited Freshwater and

Like ' Comment ' Share



Earth Day Special Offer! Get Over 50 Issues of TFH Digital for Only \$1!













Like Comment Share

www.capitalcichlids.org

AquariaCentral.com shared a link. December 13, 2010 🥸

ZooMed Monster Holiday Avatar Contest-2010 : Enter Today!



ZooMed Monster Holiday Avatar Contest-2010 - Aquaria Central www.aquariacentral.com

ZooMed Monster Holiday Avatar Contest-2010 Raffle, Contest & Promotions

Like 'Comment Share

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Like Comment Share

Like Comment Share

AquariaCentral.com shared a link,

AquariaCentral.com shared a link.

January 6, 2011 🚯

December 8, 2010 🔞

\$6,500 Finite Luxury Aquarium

\$6,500 Finite Luxury Aquarium - Aquaria Central www.aquariacentral.com

January meeting of the CCA - Capital **Cichlid Association Forums** www.capitakichlids.urg

January meeting of the CCA Next Meeting

\$6,500 Finite Luxury Aquarium General Chit-Chat

Like Comment Share

△1

₽ 2



AquariaCentral.com shared a link.

October 24, 2010 🚯

Catfish Convention 2010: Photo Thread: Load Warning!



Catfish Convention 2010 : Photo Thread: Load Warning! - Aquaria Central

www.aquariacentral.com

Catfish Convention 2010 : Photo Thread : Load Warning! Photo Gallery

Like Comment Share



AquariaCentral.com created an event.

October 15, 2010



2010 Monster Mayhem Pumpkin Carving Contest Sponsored by HikariUSA October 1, 2010 at 12:00am

http://www.aquariacentral.com/

Join · AquariaCentral.com went



AquariaCentral.com shared a link.

September 28, 2010 🔮

New Photo: 2010 09 28: Cichla Orino



December 7, 2010 🥵

Electric Eel Vs. Alligator - Aquaria Central

www.aquariacentral.com

Electric Eel Vs. Alligator Photo Gallery

Like Comment Share

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AquariaCentral.com shared a link.

AguariaCentral.com shared a link.

October 19, 2010 🕏

http://www.aquariacentral.com/forums/showthread.php? t = 237258



All-Aquarium Catfish Convention 2010 : October 21-24, 2010 : Fairfax, Virginia 22033 -Aquaria Centr

www.aquariacentral.com

All-Aquarium Catfish Convention 2010: October 21-24, 2010 : Fairfax, Virginia 22033 AC Meets

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₽31



AquariaCentral.com shared a link.

Alia October 14, 2010 🕏

Pumkin Carving 2010 Sponsored by Hikari: sent yours in today!



2010 Monster Mayhem Pumpkin Carving Contest-updated details! - Aquaria Central

www.aquariacentral.com

2010 Monster Mayhem Pumpkin Carving Contest-updated details! Raffle , Contest & Promotions

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EAST COAST

MONSTER FISH KONVENTION

SHERATON HOTEL, PARSIPPANY, NEW JERSEY SEPTEMBER 20 – 22, 2013

René Krüter

HULSBERG, NETHERLANDS

LAKE TANGANYIKA CICHLIDS

RICHARD ROSS

SANTA BARBARA, CALIFORNIA

FRESHWATER STINGRAYS

SPENCER JACK

Winniped, Canada Lake Malawi Cichlids Uruguayan Fishes

INGO SEIDEL

BERLIN, GERMANY L-NUMBER PLECOS

SOLOMON DAVID

CHICAGO, ILLINOIS PRIMITIVE FISHES

RACHEL O'LEARY

York, Pernsylvania Freshwater Invertebrates

HUGE!

RARE FISH AUCTIONS . VENDOR ROOMS

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Aquatic-Photography.com shared a link

July 19, 2012 🦃

Support, Sign & Spread:

 $\label{lem:http://www.change.org/petitions/monster-beverage-corporation-do-not-sue-monster-fish-keepers-for-trademark-infringement$



Monster Beverage Corporation: Do not sue Monster Fish Keepers for trademark infringement!

www.change.org

Monster Aquaria Network is made up of three aquarium hobby sites and their

Like Comment Share

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Aquatic-Photography.com shared a link

Support & Spread the Words:

http://support.monsterfishkeepers.com/

Support Monster Fish Keepers | We are being sued for copyright infringement. Please Help.

upport, monsterfishkeepers, com

On February 24, Monster Energy Company sent a cease & desist letter to MonsterFishKeepers, com in regards to their use of the marks MonsterFishKeepers, and the MonsterFishKeepers "M" symbol in

Like | Comment | Share

€33

APF

Aquatic-Photography.com shared a link.

January 13, 2012 🕏

Get the MonsterAquariaNetwork app today!!!! search aquatic-photography ---> https://market.android.com/details? id=com.quoord.tapatalkmonster.activity

Aquatic-Photography.com

Static Tank Decals are back -->

http://store.monsteraquarianetwork.com/index.php? page=shop.browse&category_id=16&option=com_virtuemart&Ite



Static Tank Clings

tore, monsteraquarianetwork, com

Like Comment Share

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Aquatic-Photography.com shared **MonsterFishKeepers.com**'s photo.

July 25, 2012 🗷

Support & Share!

Support & Share:

The Blog: http://support.monsterfishkeepers.com/

The petition: http://www.change.org/petitions/monsterenergy-company-stop-trademark-bullying-monsterfishkeeperscom

The Image: https://sphotos-a.xx.fbcdn.net/hphotos-snc6/283641_10150987008643212_706085905_n,jpg?dl=1

TRADEMARK INFRINGEMENT to vou?



VS.

MonsterFishKeepers.com is a forum dedicated to the care&keeping of fish, especially those of "monster" size/personality.

We are being trademark bullied by Monster Energy Corporation because our logo is an M, and the word

Like Comment Share



Aquatic-Photography.com shared a link,

🚁 January 25, 2012 🕏

Get the iOS app NOW !!!!:

http://itunes.apple.com/us/app/monsteraquarianetwork/id495494 026?mt=8

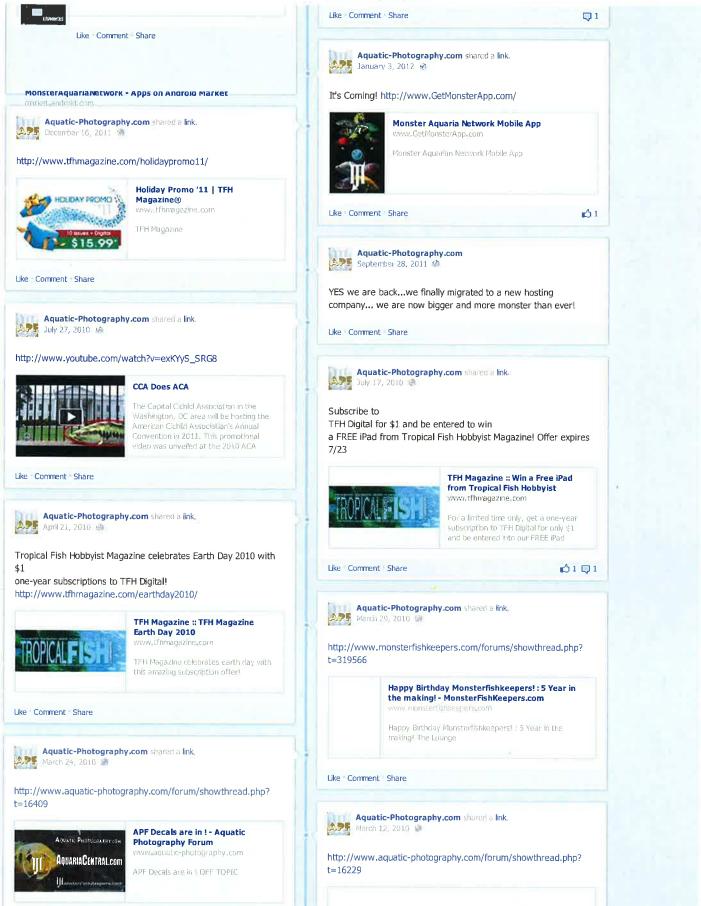


App Store - MonsterAquariaNetwork

tunes, apple, com

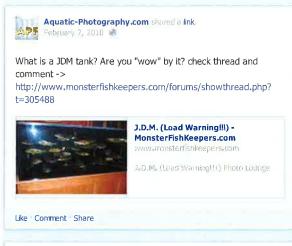
Read reviews, get dustomer ratings, see screenshots, and learn more about MonsterAquariaNetwork on the App Store, Cownload MonsterAquariaNetwork and enjoy it on your iPhone, iPad, and iPod touch.







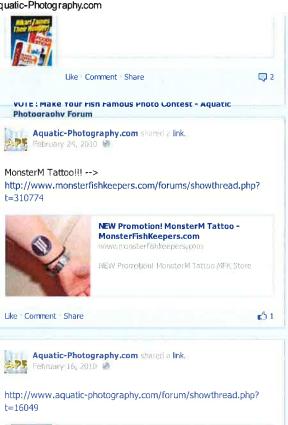








USA, Inc : http://www.aquatic-photography.com/forum/showthread.php?











Unbelievable Satellite Images! Recent images of Bondi Beach show a massive school of unidentified sharks

Like (Comment Share

Aquatic-Photography.com shared a link January 6, 2010 🙀

Australian Coastal Watch

cruising just metres from swimmers.

VOTE: POTM January 2010: http://www.aquaticphotography.com/forum/showthread.php?t=15804



POTM January 2010--Vote here!! -**Aquatic Photography Forum**

POTM January 2010--Vote here!! PHOTO OF THE MONTH CONTEST

Like Comment Share

Aquatic-Photography.com

Like Comment Share

🖒 1

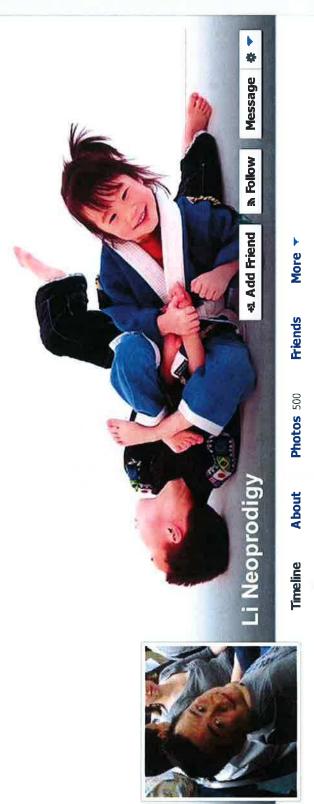


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Facebook @ 2013 · English (US)

EXHIBIT 13

6/4/13



+1 Add Friend

Do you know Li?

To see what he shares with friends, send him a friend request.

Li Neoprodigy shared InTheCapital's photo. 4 hours ago

Beer All the way!

Map Shows American Preferences: Church or Beer http://bit.ly/14obUoV

6/4/13

7 people like this.



Li Neoprodigy Batatinha!
March 11 at 4:57am via mobile



Eaine Yamasaki Very nice Li!!!



March 11 at 2:15pm via mobile



Li Neoprodigy changed his profile picture.



₹ 33

Like · Share



Mommy's Girl

High Resolution Photo:

http://www.flickr.com/photos/neoprodigy/8494101214/sizes/l/in/photostream/ with Rebecca Mendez and Eder Osorio.



Li Neoprodigy Nope..

February 12 at 8:08am via mobile · Like



Kevin Fleming try not to turn these into royal jerky! haha February 12 at 8:13am ' Edited ' Like



Li Neoprodigy i ducktaped.. February 12 at 8:32am · Like ·



February 12 at 8:32am · Like · •⁴ 1



Kevin Fleming haha, fixes everything!



February 12 at 9:22am · Like



Li Neoprodigy changed his profile picture. February 7 📵



Like · Share

L 38 📮 10

38 people like this.



Cornelius Loh Is that a patch?



February 7 at 9:36am · Like



Li Neoprodigy Yes.. its a patch.... MFK sponsored a BJJ fighter, **Todd Levin** of Yamasaki. Academy.... we are sending him PamAm and Worlds 3 February 7 at 9:51am · Edited · Like · €43 Jeffrey Hiser I want one!!



Dan Feller Me, too!

February 7 at 12:04pm · Like



6/4/13

Jeffrey Hiser How much???

February 7 at 12:06pm via mobile · Like



Li Neoprodigy Dono what I'm going do with them yet... I will post it up when I get more detailed



February 7 at 12:12pm via mobile · Like · 🖒 1



Michael McMichael Should turn it into a vinyl sticker Li,





February 7 at 7:53pm · Like





Li Neoprodigy I will fire up my cutter this weekend February 7 at 7:54pm via mobile • Like February 7 at 7:54pm via mobile · Like



Michael McMichael Nice this would look totally cool man



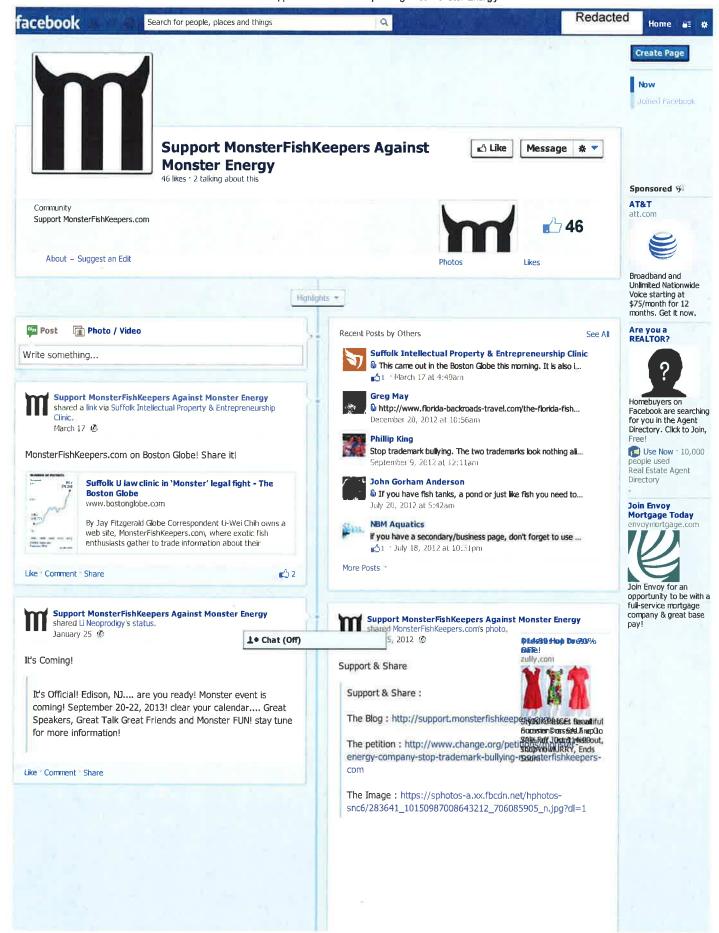


February 8 at 6:27pm · Like





Team Yamasaki: All Winners! — with Fernando Yamasaki and 9 others.







Joined Facebook July 16, 2012

Inipad Escapant



If you have fish tanks, a pond or just like fish you need to support this.

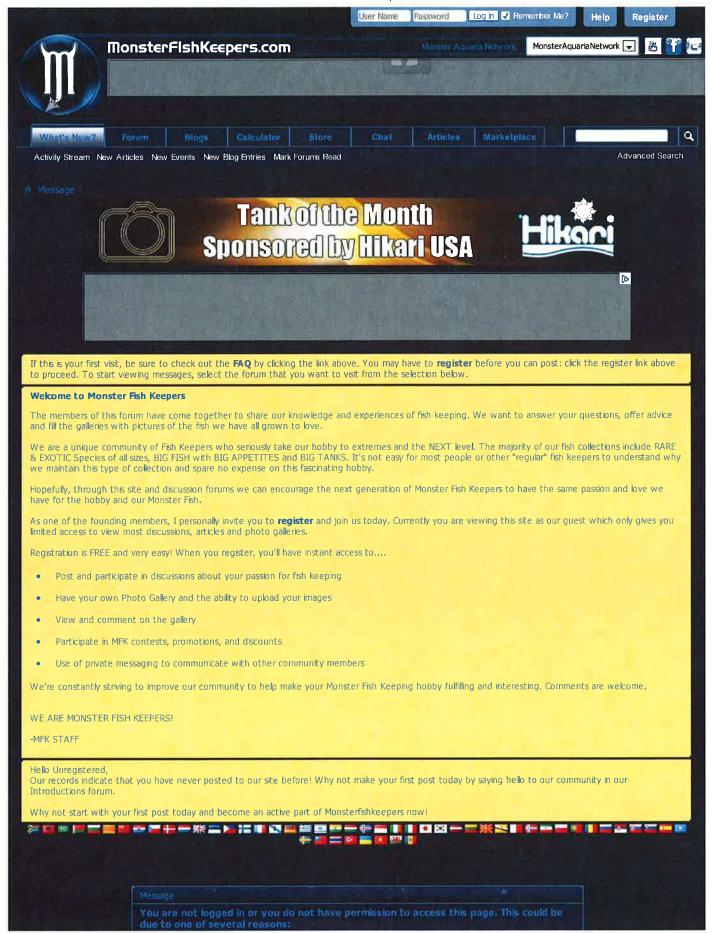
These are my Monsters.

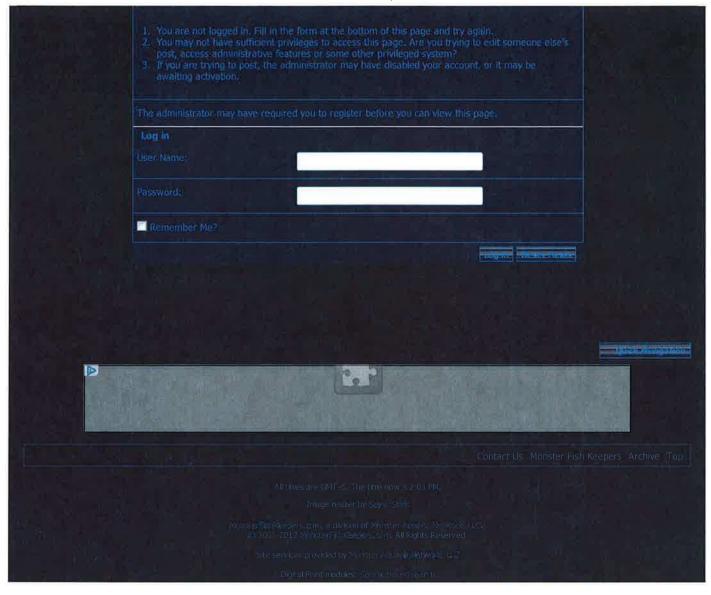






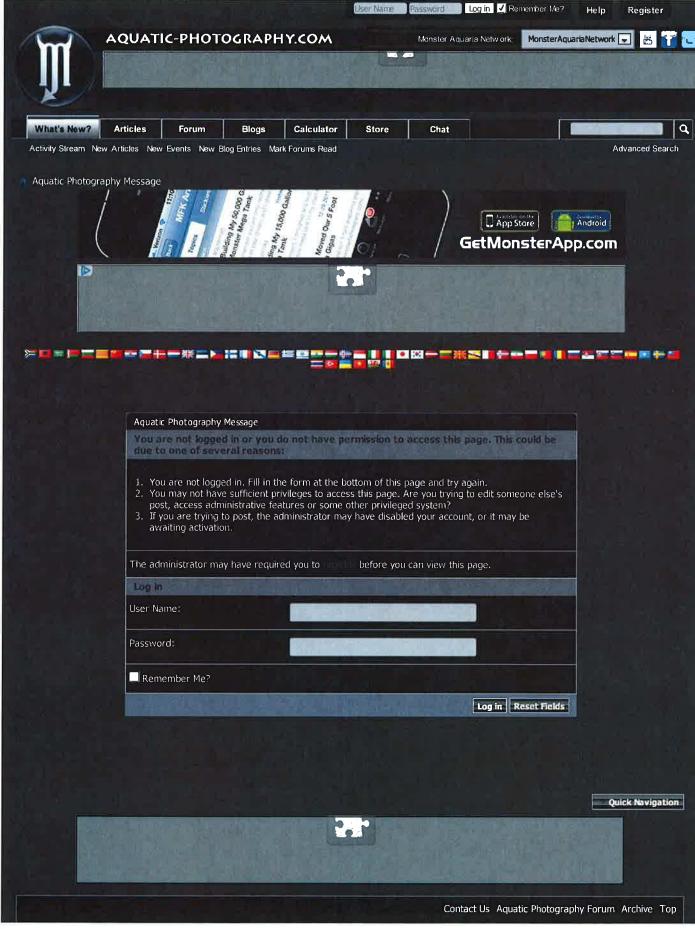
EXHIBIT 14





TTAB Opposition No. 91205924 Monster Energy Company v. Li-Wei Chih

EXHIBIT 15

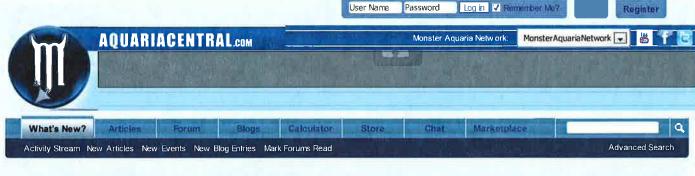


All times are CMT-5. The time now is 2:04 PM.
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EXHIBIT 16



Aquaria Central Message



If this is your first visit, be sure to check out the FAQ by clicking the link above. You may have to register before you can post: click the register link above to proceed. To start viewing messages, select the forum that you want to visit from the selection below.

Welcome to Aquaria Central!

You are currently viewing our boards as a guest which gives you limited access to view most discussions and access our other features. By joining our **free** community you will have access to post topics, communicate privately with other members (PM), respond to polls, upload content and access many other special features. You will be entering into a wonderful world of aquatic information, for all aquarists, no matter what their experience level.

Our members will do their best to help you in your aquarium endeavors. We have a vast assortment of Forums to dive into:

- -General Freshwater
- -Marine and Brackish area
- -Terrarium and Vivariums
- -Coldwater
- -DIY, Classifieds, Members Tanks Photographs and more.

We even have a general area, that is just as much fun as the rest of the Community, for off topic discussions and a real-time chat room for instant advice!

Joining Aquaria Central has numerous benefits, but the best, is our 65,000+ members, helping one another in this fascinating hobby!

Register now, and be sure to check out our scheduled contests with exciting prizes!

Registration is fast, simple and absolutely free so please, join our community today! !

If you have any problems with the registration process or your account login, please contact contact us.

Welcome to the Internet's friendliest aquatic forum!

- Team AC

Helio Unregistered,

Our records indicate that you have never posted to our site before! Why not make your first post today by saying hello to our community in our Introductions forum.

Why not start with your first post today and become an active part of Aquaria Central now!



Aquaria Central Message

You are not logged in or you do not have permission to access this page. This could be due to one of several reasons:

- 1. You are not logged in. Fill in the form at the bottom of this page and try again.
- 2. You may not have sufficient privileges to access this page. Are you trying to edit someone else's post, access administrative features or some other privileged system?

7/13	Aquaria Central
	If you are trying to post, the administrator may have disabled your account, or it may be awaiting activation.
	The administrator may have required you to register before you can view this page.
	Log in
	User Name:
	Password:
	Remember Me?
	Log in Reset Fields
	TEES, TANKS SHORTS Best worn with sunscreen and freckles
	THE LIMITED
	Contact Us Aquaria Central Archive Top
	All times are GMT -5. The time now is 2:04 PM.
	vBulletin, copyright ©2000 - 2013, Jelsoft Enterprises Ltd.
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	Image resizer by SevenSkins AquariaCentral.com, a division of Monster Aquaria Network, LLC. © 2005-2012 AquariaCentral.com. All Rights Reserved

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HANBEV.1346M TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MONSTER ENERGY COMPANY,))) Opposition No.: 91205924)
Opposer,	Serial No.: 85/508374
CHIH, LI-WEI Applicant.	Mark:
) IVIAIK.

DECLARATION OF EMILY K. SAUTER IN SUPPORT OF OPPOSER'S MOTION TO COMPEL

I, Emily K. Sauter, declare as follows:

- 1. I am an attorney with the law firm of Knobbe, Martens, Olson & Bear LLP,
- 2. counsel for Opposer, Monster Energy Company ("Opposer") in the above-identified Opposition proceeding. I have knowledge of the facts set forth below. If called upon and sworn as a witness, I could and would competently testify as set forth below.
- 3. True and correct copies of Opposer's First Set of Interrogatories Nos. 1-28, served on Applicant on March 8, 2013, and Opposer's Second Set of Interrogatories Nos. 30-31, served on April 8, 2013, are attached hereto as Exhibit 1.
- 4. True and correct copies of Opposer's First Set of Requests for Production of Documents and Things Nos. 1-60, served on March 8, 2013, and Opposer's Second Set of Requests for Production of Documents and Things Nos. 61-70, served on April 8, 2013, are

- attached hereto as Exhibit 2.
- 5. True and correct copies of Applicant's Responses to Opposer's Interrogatories Nos. 1-29, served on April 10, 2013, and Applicant's Responses to Opposer's Second Set of Interrogatories Nos. 30-31, served on May 3, 2013, are attached hereto as Exhibit 3.
- 6. True and correct copies of Applicant's Responses to Opposer's First Set of Requests for Production of Documents and Things Nos. 1-60, served on April 10, 2013, and Applicant's Responses to Opposer's Second Set of Requests for Production of Documents and Things Nos. 61-70, served on May 3, 2013, are attached hereto as Exhibit 4.
- 7. True and correct copies of two emails and the attached letters detailing Applicant's discovery deficiencies, that my colleague, Brigette B. Chaput, sent to Eve Brown, Applicant's counsel, on May 14, 2013, is attached hereto as Exhibit 5.
- 8. A true and correct copy of an email my colleague, Brigette B. Chaput, received from Eve Brown on May 24, 2013, before the scheduled meet and confer conference is attached hereto as Exhibit 6.
- 9. A true and correct copy of email correspondence between correspondence between me and Eve Brown, dated May 25, 2013, is attached hereto as Exhibit 7. In this correspondence, I confirmed that Applicant would supplement his Interrogatory responses and document production.
- 10. A true and correct copy of an email chain between me and Eve Brown, dated May 30,2013, is attached hereto as Exhibit 8.
- 11. A true and correct copy of Applicant's Supplemental Discovery Responses, served on Opposer on May 31, 2013 at 11:01 pm EST, is attached hereto as Exhibit 9.

- 12. A true and correct copy of a cease and desist letter sent by my colleague, Lynda Zadra-Symes, to Applicant Li-Wei Chih, on February 24, 2012, is attached hereto as Exhibit 10.
- 13. A true and correct copy of Applicant's Initial Disclosures, served on Opposer on November 9, 2012, is attached hereto as Exhibit 11.
- 14. True and correct copies of printouts from the following webpages are attached hereto as Exhibit 12.:
 - A. http://www.monsterfishkeepers.com, accessed on June 7, 2013;
 - B. http://www.monsterfishkeepers.com/forums/showthread.php?530062-East-Coast-Monster-Fish-Konvention-September-20-22-2013-Parsippany-NJ, accessed on June 6, 2013;
 - C. http://www.monsterfishkeepers.com/forums/forumdisplay.php?387-Support-amp-Defend-MonsterFishKeepers-com, accessed on June 7, 2013;
 - D. www.monsterfishkeepers.com/forums/showthread.php?4990145-Monster-Energy-Corporation-vs-MonsterFishKeepers-com/page1,
 www.monsterfishkeepers.com/forums/showthread.php?4990145-Monster-Energy-Corporation-vs-MonsterFishKeepers-com/page47, and
 www.monsterfishkeepers.com/forums/showthread.php?4990145-Monster-Energy-Corporation-vs-MonsterFishKeepers-com/page48, from the thread
 entitled "Monster Energy Corporation vs. MonsterFishKeepers.com" accessed on
 June 4, 2013;
 - E. www.getmonsterapp.com, accessed on June 6, 2013;
 - F. www.support.monsterfishkeepers.com, accessed on June 7, 2013;
 - G. https://www.facebook.com/ISupportMonsterFishKeepers, accessed on May 23,

2013;

- H. https://www.facebook.com/MonsterAquariaNetworks?ref=ts&fref=ts, accessed on June 4, 2013;
- I. www. facebook.com/AquariaCentral?ref=ts&fref=ts, accessed on June 7, 2013;
- J. www.facebook.com/facebook.com/AquaticPhotography?fref=ts, accessed on June6, 2013;
- K. http://www.change.org/petitions/monster-energy-company-stop-trademark-bullying-monsterfishkeepers-com, accessed on June 4, 2013;
- L. http://www.aquariacentral.com/, accessed on June 7, 2013;
- M. http://www.aquariacentral.com/forums/forumdisplay.php?201-Support-amp-Defend-MonsterFishKeepers-com, accessed on June 4, 2013;
- N. http://www.aquatic-photography.com/, accessed on June 7, 2013; and
- O. www.monsteraquarianetwork.com/forum, accessed on June 7, 2013.
- 15. True and correct copies of excerpts from printouts of one of Applicant's websites located are attached hereto as Exhibit 13
 - A. https://www.facebook.com/Neoprodigy?fref=ts, containing the cover page, a post dated March 8, 2013, a post dated February 7, 2013, and the responses thereto, accessed on June 4, 2013;
 - B. https://www.facebook.com/groups/SupportMonsterFishKeepers/?ref=ts&fref=ts, containing the website's cover page, some of the website's posts dated July 26-28, and the corresponding responses thereto, and a post dated July 17, 2012 and the corresponding responses thereto, accessed on June 4, 2013.
- 16. To date, Applicant's responses to Opposer's Discovery Requests did not identify

Applicant's websites located at:

- A. www.support.monsterfishkeepers.com.
- B. https://www.facebook.com/Neoprodigy?fref=ts.
- C. https://www.facebook.com/ISupportMonsterFishKeepers.
- D. https://www.facebook.com/groups/SupportMonsterFishKeepers/?ref=ts&fref=ts.
- E. https://www.facebook.com/MonsterAquariaNetworks?ref=ts&fref=ts.
- F. http://www.change.org/petitions/monster-energy-company-stop-trademark-bullying-monsterfishkeepers-com.
- G. http://www.monsterfishkeepers.com/forums/forumdisplay.php?387-Support-amp-Defend-MonsterFishKeepers-com.
- H. http://www.aquariacentral.com/forums/forumdisplay.php?201-Support-amp-Defend-MonsterFishKeepers-com.
- 17. To date, Applicant has produced no webpages in Applicant's document production.
- 18. To date, Applicant has produced less than 200 documents in Applicant's document production in this opposition.
- 19. On June 7, 2013, I attempted to use the search function on www.monsterfishkeepers.com.

 A true and correct copy of a printout of the resulting webpage at http://www.monsterfishkeepers.com/forums/search.php?do=process after I ran the search is attached hereto as Exhibit 14.
- 20. On June 7, 2013, I attempted to use the search function on www.aquatic-photography.com. A true and correct copy of a printout of the resulting webpage at http://www.aquatic-photography.com/forum/search.php?do=process after I ran the search, is attached hereto as Exhibit 15.

- 21. On June 7, 2013, I attempted to use the search function on http://www.aquariacentral.com/. A true and correct copy of a printout of the resulting webpage at http://www.aquariacentral.com/forums/search.php?do=process after I ran the search, is attached hereto as Exhibit 16.
- 22. To date, Applicant's document production has not included any documents evidencing that Applicant has spent any money advertising Applicant's Mark on the goods in Applicant's Application.
- 23. To date, Applicant's document production has produced very few documents dated between February 24, 2012 to present.

Dated: June 12, 2013	By:	Engl	K.	Caro
	·	Emily K. Sauter		

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing <u>DECLARATION OF EMILY K.</u>
<u>SAUTER IN SUPPORT OF OPPOSER'S MOTION TO COMPEL</u> upon Applicant by depositing one copy thereof in the United States Mail, first-class postage prepaid, on June 12, 2013, addressed as follows:

EVE BROWN
SUFFOLK UNIVERSITY LAW SCHOOL
120 TREMONT STREET
BOSTON, MA 02108
UNITED STATES

Sabrina Jacob

15562494 060813 HANBEV.1346M TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MONSTER ENERGY COMPANY,))) Opposition No.: 91205924
) Serial No.: 85/508374
Opposer,)
V.	
CHIH, LI-WEI,	} 1) 1
Applicant.) Mark:
	_)

OPPOSERS' MOTION TO COMPEL

Commissioner for Trademarks P.O. Box 1451 Alexandria, VA 22313-1451

Dear Sir or Madam:

Pursuant to 37 C.F.R. § 2.120(e)(1) and Trademark Trial and Appeal Board Manual of Procedure ("T.B.M.P.") §§ 523 and 527, Opposer Monster Energy Company ("Opposer") respectfully moves for entry of an Order compelling Applicant, Li-Wei Chih ("Applicant") to (1) produce withheld documents and communications responsive to Opposer's Requests for the Production of Documents and Things Nos. 9, 20, 39, 51, and 56, (2) conduct a reasonably-thorough search to identify additional documents responsive to Opposer's Document Request Nos. 1-70, and (3) provide complete responses to Opposer's Interrogatories Nos. 16, 20, and 25. Opposer also requests that the Board suspend the opposition proceedings in light of this Motion to Compel pursuant to 37 C.F.R. § 2.120(e)(2), T.M.B.P. § 523.01.

The parties' counsel held a meet and confer conference regarding this motion on May 24, 2013 as required by § 2.120(e)(1). Despite attempts to resolve the issues raised in this motion, Applicant has failed to produce all documents responsive to Document Requests 9, 21, 39, 51, and 56, has failed to conduct a reasonably-thorough search to identify documents responsive to Opposer's Document Requests, and has refused to provide complete interrogatory responses to Interrogatories Nos. 16, 20, and 25. This motion is supported by the Declaration of Emily K. Sauter ("Sauter Decl.") submitted herewith.

MEMORANDUM OF LAW

I. STATEMENT OF FACTS

A. Background of Proceeding

Since 2002, Opposer has continuously used and promoted its

("M Mark") mark

"M and MONSTER Marks") in connection with a wide variety of goods, including beverages, clothing, accessories, bandanas, sweat bands, gloves, headgear, sporting goods, helmets, and stickers. Opposer's M and MONSTER Marks are global brands that have appeared on billions of beverage cans, on clothing, accessories, sports gear, and in extensive nationwide promotions. These include, among other things, sponsorship of music festivals, athletes, and sports events that are televised live nationwide and internationally and prominently feature Opposer's M and MONSTER Marks. Many of the sponsored athletes promote Opposer's brand by wearing clothing, uniforms, and gear bearing the M and MONSTER Marks. Clothing bearing the M and MONSTER Marks is sold at the venues where Opposer sponsors sporting events and music festivals. Opposer's marketing and promotional efforts have resulted in vast TV, radio, print media, and Internet coverage. Opposer has become one of the most successful energy drink companies in the U.S. Opposer has taken steps to protect its international goodwill and reputation in its valuable MONSTER Marks by seeking registration of its marks in the U.S. and

worldwide. Opposer owns a number of registrations for its MONSTER Marks for goods including clothing, sports gear, accessories, including the registrations asserted in this Opposition.

Through the extensive efforts that Opposer has taken to market, promote, and protect its M and MONSTER Marks, Opposer has developed significant goodwill and recognition in its

marks. Applicant's registration of its MONSTERFISHKEEPERS mark and its mark in connection with clothing items is highly likely to cause confusion and to cause mistake or deceive consumers and to cause dilution of Opposer's famous Monster marks. Accordingly, in this Opposition and related Opposition No 91205893, Monster Energy Company opposes the

registration of Applicant's U.S. Trademark Application Serial No. 85/508374 for the mark and Applicant's U.S. Trademark Application Serial No. 85/518033 for the MONSTERFISHKEEPERS mark.

B. Opposer's Discovery Requests

Opposer timely served its First and Second Sets of Requests for Production on March 11, 2013 and April 8, 3013, including Request Nos. 9, 20, 39, 51, and 56. Sauter Decl., ¶ 3, Ex. 2. ¹ These Requests seek categories of documents relevant to the *DuPont* factors considered in determining whether there is a likelihood of confusion. The Requests at issue seek documents including:

- Documents relating to Opposer's goods and services offered in connection with Opposer's asserted marks (Request No. 9);
- Documents relating to Applicant's advertising or promotion of Applicant's marks and/or its goods and services offered in connection with the marks (Request No. 20);

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¹ All exhibits (Ex.) are attached to the Declaration of Emily K. Sauter, filed concurrently herewith.

- Communications between Applicant and third parties regarding Applicant's mark (Request No. 39);
- Comments or inquiries that Applicant has received from customers or potential customers relating to Opposer or its marks or products (Request No. 51); and
- Documents identified in Applicant's initial disclosures (Request No. 56).

In response to a number of Opposer's Requests including Request Nos. 9, 20, 39, 51, and 56, Applicant has refused to produce any documents that Applicant claims it might be possible to find by searching "Applicant's public website, his public Facebook page, or the USPTO database." See id. at ¶ 10, Ex. 9. Applicant operates several online forums, and after Opposer instituted the pending oppositions Applicant began an internet and social medial campaign against Opposer. See id. at ¶ 13, Ex. 12. A cursory internet search revealed numerous responsive documents that relate to Applicant's Mark and the applied-for goods and services, such as multiple websites controlled by Applicant, multiple social media pages controlled by Applicant, and comments on these websites and pages referencing communications regarding the pending opposition. See id.. However, Applicant has not produced any of these documents. See id. at ¶ 21, 23. Instead, Applicant insists that Opposer should search for documents on Applicant's websites and Facebook pages. Id. at ¶ 10, Ex. 9. This is unreasonable. Opposer has identified at least nine websites and Facebook pages controlled by Applicant. The websites Opposer has identified as being controlled by Applicant claim to have over 750,000 individual threads, containing over 9 million individual posts. See id. at ¶ 13, Ex. 12. Accordingly, the burden on Opposer to find these documents through internet searches would be enormous.

Further, Applicant has not even made a good faith attempt to comply with its discovery obligations and has withheld or failed to perform a reasonable search for a number of documents responsive to Opposer's Requests, and specifically Request Nos. 9, 20, 39, 51, and 56. Applicant has produced fewer than 200 documents in response to Opposer's discovery requests. Id. at ¶17. Despite Applicant's extensive online presence where he actively publicizes and holds

discussions of the issues relevant to this opposition proceeding, Applicant has not produced any electronic documents, emails, or communications between Applicant and any third party from any of these websites. Moreover, Applicant has not even produced documents it admits are in his possession and are relevant to this dispute, such as the categories of documents identified in his Initial Disclosures. *See* <u>id.</u> at ¶12, Ex. 11. Applicant also has withheld responsive documents posted on Applicant's various websites, and even more troubling, Applicant has, in some cases, failed to even identify those websites to Opposer.

Applicant also has withheld information in responding to Opposer's Interrogatories. Opposer served its First Set of Interrogatories on March 11, 2013, which included Interrogatories Nos. 16, 20, and 25 seeking the following basic information:

- The advertising, marketing and promotion of Applicant's goods bearing the MONSTERFISHKEEPERS mark (Interrogatory No. 16);
- Any instances of an inquiry or comment regarding an association between
 Applicant and Opposer (Interrogatory No. 20); and



 How Applicant selected and uses its No. 25). design (Interrogatory

<u>Id.</u> at ¶2, Ex. 1.

Applicant's responses to Interrogatories Nos. 16, 20, and 25 are incomplete and contradictory. For example, in response to Interrogatory No. 16, seeking a description of how Applicant promotes its goods and services, Applicant claims that it does not promote its goods in Class 25 that are the subject of this proceeding and refuses to provide any description of Applicant's promotional or marketing activities. *See* <u>id.</u> at ¶ 4, 10, Ex. 3, 9. However, Applicant's response to Interrogatory No. 16 directly contradicts Applicant's claim that it does no marketing or promotion. In response to Request No. 16, Applicant claimed that he has spent

approximately \$100,000 or more on advertising and promotion of his mark. See <u>id.</u> at ¶ 4, 10, Ex. 3, 9. Applicant cannot claim to have spent \$100,000 on marketing while at the same time refusing to provide information about that marketing on the grounds that Applicant allegedly does no marketing or promotion of its goods and services. See <u>id.</u> at ¶ 21.

Similarly, Interrogatory No. 25 sought information regarding Applicant's use of its

design. Applicant's response to Interrogatory No. 25 omitted two significant uses of the design. See id. at ¶ 4, 10, Ex. 3, 9. Opposer discovered these omitted uses through Applicant's website. Applicant also refused to provide any substantive information in response to Interrogatory No. 20 seeking information about any inquiry or comment regarding an Association between Applicant and Opposer. See id. at ¶ 4, 10, Ex. 3, 9. Applicant admits in its response that it is aware of such communications, but refuses to provide any information about them on the grounds that Applicant allegedly could find the communications through searches of Applicant's websites. See id.

C. Opposer's Attempts to Resolve This Discovery Dispute

In an attempt to resolve these issues, Opposer's counsel sent Applicant's counsel two emails attaching letters detailing Applicant's discovery deficiencies on May 14, 2013. <u>Id.</u> at ¶ 10, Ex. 9. Applicant responded by email that Applicant would not supplement its production on the grounds that the requested documents "can be sought from a source that is more convenient and less burdensome" and that "it is not [Applicant's] practice to save or maintain records." <u>Id.</u> at ¶ 6, Ex. 5. Subsequently, on May 24, 2013, Opposer's counsel and Applicant's counsel held a meet and confer conference via telephone. <u>Id.</u> at ¶¶ 7, 8, Exs. 6, 7.

During that telephone conference, Applicant's counsel agreed that Applicant would take certain actions, including supplementing Applicant's responses to Opposer's Document Request Nos. 9, 20, 39, 51, and 56; ensure that Applicant had conducted a reasonably-thorough search

for documents responsive to Opposer's Document Requests; and supplement Applicant's responses to Opposer's Interrogatories Nos. 16, 20, and 23. <u>Id</u>. at ¶ 8, Ex. 7. Opposer gave Applicant ample time to resolve all of his discovery deficiencies, and granted Applicant his requested extension of time to prepare supplemental responses. <u>Id</u>.

More than three months after Opposer served its initial discovery requests, and despite agreeing to supplement its responses and perform a reasonable search for documents, Applicant continues to withhold documents and information. Applicant continues to refuse to produce documents admittedly in his possession because he claims they are available on the internet. Id. at ¶ 10, Ex. 9. Further, despite Applicant's admissions that he has certain categories of documents that have not been produced, such as those identified in his initial disclosures, Applicant continues to insist that he has no additional documents because "it is not [Applicant's] practice to save or maintain records." Id. at ¶ 7, 12, Exs. 6, 11. Additionally, despite previously agreeing to supplement his responses to Interrogatories Nos. 16, 20, and 25, Applicant continues to refuse to provide the requested information. Id. at ¶ 10, Ex. 9.

Therefore, pursuant to 37 C.F.R. § 2.120(e), FRCP 37, and T.B.M.P. § 523, Opposer respectfully requests that the Trademark Trial and Appeal Board (the "Board"), enter an Order compelling Applicant (1) to produce documents responsive to Opposer's Document Request Nos. 9, 20, 39, 51, and 56; (2) to conduct a reasonably-thorough search to identify documents responsive to Opposer's Document Requests; and (3) to provide complete responses to Opposer's Interrogatories Nos. 16, 20, and 25.

II. THE REQUESTS AND RESPONSES AT ISSUE

DOCUMENT REQUESTS

<u>Document Request No. 9</u>: All documents and things referring or relating to the goods or services in connection with which Opposer currently uses or licenses, or has used or licensed, the Asserted Mark.

<u>Applicant's Response to Document Request No. 9</u>: Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Applicant has no documents or things referring or relating to the goods or services in connection with which Opposer currently uses or licenses, or has used or licensed, the Asserted Mark.

<u>Document Request No. 20</u>: All documents and things referring or relating to the advertising and promotion of Applicant's Mark or of the goods and/or services sold in connection with Applicant's Mark, including, but not limited to, media in which Applicant's Mark appears, labels, boxes, packaging, instructions for use, directions for use, stickers, advertisements, brochures, flyers, pamphlets, promotional materials, magazines, articles, billboards, radio advertisements, television advertisements, Internet advertisements, or other printed or electronic publications, website or domain names.

<u>Applicant's Response to Document Request No. 20</u>: Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver to the objection, Applicant responds as follows: See "Exhibit A," "Exhibit B," "Exhibit C," "Exhibit D," "Exhibit E," "Exhibit F," "Exhibit G," "Exhibit H," "Exhibit I," Exhibit J," "Exhibit K," "Exhibit L," Exhibit U (1-3)," "Exhibit V (1-7)," "Exhibit W (1-9)," "Exhibit X (1-8)," "Exhibit Y (1-12)" "Exhibit Z (1-6)," "Exhibit AA 1-5," "Exhibit BB (1-8)," "Exhibit CC (1-8)" and "Exhibit DD (1-8)," "Exhibit EE," "Exhibit FF," "Exhibit GG," "Exhibit HH," and "Exhibit II."

<u>Document Request No. 39</u>: All communications between Applicant and any third party relating to Applicant's Mark.

Applicant's Response to Document Request No. 39: Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Request to the extent that it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

<u>Document Request No. 51</u>: All documents and things referring or relating to any comments or inquiries from customers or potential customers that Applicant has received relating to Opposer, Opposer's Marks, or Opposer's products.

<u>Applicant's Response to Document Request No. 51</u>: Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response.

Subject to and without waiver of objections, Applicant responds as follows: Please see Applicant's business website found at the link below:

www.monsterfishkeepers.com. Please see Applicant's fan page found at the link below:

http://www.facebook.com/MonsterFishKeepers?ref=ts&fref=ts.

<u>Document Request No. 56</u>: All documents and things identified in Your Initial Disclosures.

<u>Applicant's Response to Document Request No. 56</u>: Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant further objects on the ground that the requested documents are readily available to Opposer

Applicant's Supplemental Response to Opposer's Document Requests [general response, not addressed to specific document requests]: Applicant confirms after a complete and thorough search that he has produced all documents responsive to each request, with the exception of documents publicly and readily available from sources that are more convenient and less burdensome, such as Applicant's public website, his public Facebook page, or the USPTO database. Applicant further confirms that he is not withholding any documents responsive to any request, and that he has completed his document production for each request.

INTERROGATORIES

<u>Opposer's Interrogatory No. 16</u>: Describe in detail all manners in which the goods and/or services sold or offered in connection with Applicant's Mark have been advertised or promoted and/or plan to be advertised or promoted.

Applicant's Response to Interrogatory No. 16: Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague and ambiguous. Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant responds as follows: Applicant advertises goods and/or services in connection with Applicant's Mark in various fish-trade magazines, at monsterfish trade shows, online through Applicant's monsterfish forum and through various fish-related websites.

<u>Applicant's Supplemental Response to Interrogatory No. 16</u>: Clarifying Applicant's previous response, Applicant does not advertise or promote his Class

25 goods. He only advertises and promotes his Class 38 services (specifically, his website and online community forum). These services are not the subject of this opposition proceeding. Applicant's Class 38 marks are incontestable. Applicant's Class 25 goods are made available on his Class 38 website under a tab labeled "Shop" but are not promoted or advertised.

<u>Opposer's Interrogatory No. 20</u>: Describe any instances of an inquiry or comment regarding an association between Applicant's Goods on the one hand, and Opposer's products bearing Opposer's Marks, including the Claw Icon mark, on the other hand, including identifying all persons having knowledge thereof and all documents relating thereto.

Applicant's Response to Interrogatory No. 20: Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague and ambiguous with respect to "instances of an inquiry or comment." Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant responds as follows: Applicant recalls no instances as listed in Interrogatory No. 20.

Applicant's Supplemental Response to Interrogatory No. 20: The only comments regarding an association between Applicant's Goods on the one hand, and Opposer's products bearing Opposer's Marks, including the Claw Icon mark, on the other hand, have been in specific response to this Opposition proceeding. All comments Applicant is aware of strongly refute, rather than support, any likelihood of confusion claim Opposer may assert. All comments are publicly available on Applicant's website and Facebook page and can be easily viewed by Opposer. Applicant has never received any private messages, letters, inquiries or e-mails regarding Opposer. Prior to this Opposition proceeding, Applicant never received, read, or heard of any inquiries or comments regarding any association between Applicant and Opposer or their respective marks, goods, or services.

Opposer's Interrogatory No. 25: Describe in detail the circumstances



surrounding Applicant's selection and use of the design including the first use of that design.

Applicant's Response to Interrogatory No. 25: Applicant incorporates by this reference its General Objections as if set forth fully herein. As this proceeding continues, further facts and documents will be discovered, and Applicant reserves the right to supplement his response. Applicant objects to this Interrogatory on the ground that it contains discrete subparts contrary to FRCP Rule 33(a) and comprises more than one interrogatory. Applicant further objects to this Interrogatory on the ground that it is vague and ambiguous. Applicant further objects to this Interrogatory to the extent it calls for information or documents protected from disclosure under attorney-client privilege, the work-product doctrine, or other applicable privilege, immunity or other limitation on discovery.

Subject to and without waiver of objections, Applicant responds as follows: Applicant created the patch shown in Interrogatory No. 25 approximately three months ago to give to his child's jujitsu team for inspiration at children's jujitsu competitions.

Applicant's Supplemental Response to Interrogatory No. 25: Applicant confirms that he created the patch shown in Interrogatory No. 25 sometime in February 2013 to give to his child's jujitsu team for inspiration at children's jujitsu competitions. Applicant has not, nor does he plan to ever, offer this design or patch for sale. He does not recall the exact date of first use.

III. LEGAL STANDARD FOR A MOTION TO COMPEL

A motion to compel discovery should be granted where, as here, (1) Opposer made a good faith attempt to resolve the matter, yet (2) Applicant failed to provide responses to properly served discovery requests, or produce documents or information responsive to Opposer's Discovery Requests. *See* 37 C.F.R. § 2.120(e); T.B.M.P. §§ 523.01-.02. Applicant must answer each interrogatory separately and fully in writing under oath, and Applicant has a duty to thoroughly search its records for all information properly sought in a request for discovery, and to provide such information to Opposer within the time allowed for responding to the request. T.B.M.P. §§ 405.04(b) and 408.02.

As discussed above, Opposer made a good faith attempt to resolve this discovery dispute. Despite agreeing to supplement his responses, it has now been nearly a month and Applicant continues to withhold documents and information.

IV. REQUESTS FOR PRODUCTION

A. Applicant is Withholding Responsive Documents Solely on the Grounds that He Claims the Documents Could Be Located Through Internet Searches of His Numerous Websites and Facebook Pages

Applicant's supplemental response to Opposer's First and Second Document Requests states, "he has produced all documents responsive to each request, with the exception of documents publicly and readily available from sources that are more convenient and less burdensome, such as Applicant's public website, his public Facebook page, or the USPTO database." Sauter Dec. ¶ 10, Ex. 9 (emphasis added). Applicant cannot withhold documents simply because it may be possible to find them on his Facebook page or his public website, or because they may also be available from the U.S. Patent and Trademark Office ("USPTO"). Applicant has in his possession all of the documents he posted on the internet and that can be obtained from the USPTO, and has an obligation to make these documents available to Opposer for inspection and copying. The burden on Applicant to make these documents available is very slight compared to the enormous burden on Opposer to conduct internet searches to find and print these documents from Applicant's internet sites and Facebook pages. Applicant's position is especially unreasonable as Opposer has identified at least five websites which may be under Applicant's control, at least 4 Facebook pages which may be under Applicant's control, and the USPTO maintains several, regularly updated databases. Id. at ¶ 13, Ex. 12.

For example, the homepage of Monsterfishkeepers.com, Applicant's primary website, currently states the forum has over 100,000 members, over 500,000 threads, and over 6.3 million posts. <u>Id.</u> Applicant's website located at www.monsterfishkeepers.com appears to be a subsidiary of Monster Aquaria Network, LLC, which appears to be owned by Applicant and affiliated with at least four other websites that appear to be under Applicant's control-http://www.getmonsterapp.com/, http://www.aquariacentral.com/, http://www.aquatic-

photography.com/, and http://www.monsteraquarianetwork.com/forums/. <u>Id.</u>. Combined, the four websites claim to have over 750,000 individual threads, containing over 9 million individual posts. *See* <u>id.</u>. Applicant would force Opposer to search all of these sites to see if all responsive documents can be located.

Furthermore, Applicant's websites and Facebook pages have security settings and membership sections that are not available for Opposer to view. *See* <u>id.</u>, ¶13, 14, 18-20, Exs. 12, 13-16. Thus, there are undoubtedly responsive documents in Applicant's possession that could not be located by Opposer through any search. Applicant's position is untenable and the Board should compel Applicant to immediately produce <u>all</u> documents responsive to Opposer's discovery requests.

B. <u>Applicant Either Has Failed to Conduct a Reasonable Search or Has Engaged in Spoliation of Evidence</u>

In an email dated May 24, 2013, Applicant's counsel asserts that Applicant is not in possession of responsive documents because "it is not [Applicant's] practice to save or maintain records." Id. ¶ 8, Ex. 7. Yet, Applicant has had a duty to preserve records and evidence relevant to this proceeding since at least February 24, 2012, when Applicant received Opposer's cease and desist letter warning Applicant that Opposer intended to "vigorously oppose" Applicant's Applications Serial Nos. 85/518033 and 85/518033. See Id. ¶ 11, Ex. 10; see also Supreme Oil Co. v. Lico Brands Inc., 39 U.S.P.Q.2d 1695, 1698 (TTAB 1996) (a party has a duty to preserve documents when it has knowledge that a lawsuit will be filed and knew or should have known that the documents would constitute evidence relevant to this case); cf. Arista Records LLC v. Usenet.com, Inc., 608 F. Supp. 2d 409, 430 (S.D.N.Y. 2009) ("Where copyright infringement is alleged, and a cease and desist letter issues, such a letter triggers the duty to preserve evidence, even prior to the filing of litigation.") (citing Fox v. Riverdeep, Inc., No. 07 Civ. 13622, 2008 WL 5244297, at *7 (E.D. Mich. Dec. 16, 2008). Thus, regardless of Applicant's regular practice, Applicant should have saved and maintained any documents relating to this proceeding since at least February 2012.

Despite Applicant's duty to preserve relevant evidence, Applicant has produced almost no documents dated from February 24, 2012 to present. *See* <u>id.</u> at ¶ 22. Applicant should have a significant number of sales invoices, purchase orders, shipping and/or tax records, and other documents relating to the advertising and promotion of Applicant's Mark in connection with the applied-for goods for this time period. These documents are responsive to Opposer's Requests for Production Nos. 20 and 56 seeking documents relating to Applicant's use of the MONSTERFISHKEEPERS mark on clothing and documents relating to Applicant's promotion or advertising of Applicant's Mark. *See* <u>id.</u> at ¶ 4, Ex. 3.

Applicant also has produced no emails, private messages, communications or correspondence of any type relating to its marks, this Opposition or Opposer's marks. Id. at ¶ 23. Applicant has many extensive websites and Facebook accounts, and has widely discussed and publicized this dispute between Opposer and Applicant with numerous website viewers and followers. Id. at ¶ 13, Ex. 12. In light of Applicant's websites and activities, it is very likely that Applicant has a significant number of emails, private messages, and other communications or correspondence. These documents are responsive to Opposer's Request Nos. 39 and 51 seeking communications with third parties relating to Applicant's Mark and documents referring or relating to any comments or inquiries received by Applicant relating to Opposer, Opposer's Marks, or Opposer's products. Applicant had a duty to preserve these documents since at least February 2012. Thus, Applicant either has not conducted a reasonable search or has engaged in spoliation of evidence.

Accordingly, Applicant should be compelled to conduct a reasonably-thorough search to identify additional documents responsive to Opposer's Document Requests

C. <u>Applicant is Withholding Documents that are Admittedly Responsive and In His</u> Possession

1. <u>Applicant is Withholding Documents Identified in His Initial Disclosures (Request No. 56)</u>

Applicant's Initial Disclosures identified four categories of documents in Applicant's possession: (1) documents associated with Applicant's federal trademark application, (2)

documents reflecting Applicant's creation and first use of its mark, (3) documents reflecting Applicant's goods and services, and (4) documents reflecting Opposer's goods and services. *See* id. at ¶ 12, Ex. 11. Opposer's Request for Production No. 56 requested all documents identified in Applicant's initial disclosures. Id. at ¶ 3, Ex. 2Applicant responded by objecting on the grounds that the requested documents are readily available and initially refused to produce responsive documents. Id. at ¶ 5, 10, Exs. 4, 9. In his Supplemental Response, Applicant asserted that he produced all documents responsive to each request, but Applicant still has not produced any documents in the categories listed in his Initial Disclosures. Id. at ¶ 10, Ex. 9.

Applicant has no legitimate basis for withholding these documents. Moreover, the documents in category (2) of Applicant's initial disclosures reflecting Applicant's creation and first use of its mark are particularly important in this Opposition because Applicant has indicated that it may assert that Opposer's Marks and Applicant's Mark have coexisted without actual confusion in the marketplace. *See* <u>id.</u> at ¶ 10, Ex. 9, p. 11 ("Opposer's Marks **have never** and would never cause a likelihood of confusion.") (emphasis added). Opposer cannot fully respond to this argument if Applicant withholds documents evidencing the first, and subsequent, sales of goods bearing Applicant's Mark. Moreover, Applicant falsely stated the date of first use in its Application. Applicant's supplemental response to Opposer's Request for Admission No. 6 admits that Applicant had not used Applicant's Mark on any of the goods listed in Applicant's Application by May 15, 2005, the first use date in Applicant's Application. *See* <u>id.</u> at ¶ 10, Ex. 9, p. 2 ("Applicant first used Applicant's Mark on Applicant's Goods as defined in Opposer's Requests for Admission in 2009"). Applicant has not provided any documents evidencing the first use date of Applicant's Mark for any of the goods identified in Applicant's Application. <u>Id.</u> at ¶ 5, 10, Exs. 4, 9.

Accordingly, Applicant should be compelled to make a reasonable search for and produce all documents in its possession in the categories identified in its initial disclosures.

2. <u>Applicant has Withheld Documents Posted on his Websites and Failed to Inform Opposer of the Existence of One or More of Applicant's Websites (Request Nos. 9, 20, 39, and 51)</u>

Applicant has posted on his websites a number of documents that Applicant has not produced including (1) documents relating to Applicant's use and promotion of goods or services bearing the MONSTERFISHKEEPERS mark responsive to Request No. 20 and (2) communications between Applicant and third parties responsive to Request Nos. 9, 39 and 51. Even more troubling, Applicant has not even disclosed to Opposer the existence of some of these websites. Opposer's review of these websites indicates that in addition to the documents identified by Opposer, there are likely large numbers of responsive documents being withheld by Applicant that Opposer has not identified and cannot access.

a. <u>Documents Relating to Applicant's Use and Promotion of its</u> <u>MONSTERFISHKEEPERS mark (Request No. 20)</u>

Opposer discovered that on Applicant's webpage www.getmonsterapp.com, Applicant promotes a mobile application bearing Applicant's MONSTERFISHKEEPERS Mark in the phrase "MONSTER FISH KEEPERS" and in connection with the phrase "When In Doubt : Go Monster", as shown below:



<u>Id.</u> at ¶ 13, Ex. 12. Applicant has not produced any documents from this website, or any documents from which Opposer could have identified that the phrase "When in Doubt: Go Monster" has been used in connection with Applicant's MONSTERFISHKEEPERS mark. <u>Id.</u> at ¶ 16.

Additionally, Applicant's website located at https://www.facebook.com/Neoprodigy?fref=ts shows that Applicant has used a design containing the MONSTERFISHKEEPERS

mark, , on

mark, , on a patch for clothing worn by an athlete Applicant sponsored in 2013. <u>Id.</u> at ¶ 14, Ex. 13. Applicant did not disclose this website, let alone produce documents, relating to any of these uses of the MONSTERFISHKEEPERS mark. *See* <u>id.</u> at ¶¶ 5, 10, Ex. 4, 9.

The documents on these websites that Applicant has withheld show Applicant's use of its MONSTERFISHKEEPERS mark in conjunction with other words and terms, such as "GO BIG OR GO MONSTER," "UNLEASH YOUR INNER MONSTER," and "MONSTER UNLEASHED." *See* <u>id.</u> at ¶13, Ex. 12. These documents are highly relevant to the issue of whether Applicant adopted Applicant's mark with bad faith intent to confuse. All of these

marks, especially when used concurrently, are confusingly similar to Opposer's famous

explained, evidence of bad faith or intent to confuse is relevant to the likelihood of confusion analysis. L'Oreal S.A. v. Marcon, 102 U.S.P.Q.2d 1434, 1441 (TTAB 2012) ("Under the thirteenth *du Pont* factor, evidence of applicant's bad faith adoption of his mark is relevant to our likelihood of confusion analysis").

These withheld documents and all of the related documents Opposer does not know about are relevant to numerous other issues in this proceeding, including, inter alia, the similarity of

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² In addition to the and monormal registrations Opposer asserted in Opposer's Notice of Opposition, Opposer also owns U.S. Trademark Registration No. 2,769,364 for the mark UNLEASH THE BEAST!, U.S. Registration Nos. 4,036,681, 3,057,061, 3,044,315 for the mark MONSTER ENERGY and U.S. Registration Nos. 3,057,061 and 3,134,842 for the mark MONSTER ENERGY.

trade channels, the conditions under which sales are made, and the variety of goods on which a mark is used. In re E.I. du Pont de Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973); TBMP §309.03 ("The evidentiary factors the Board considers in determining likelihood of confusion are set out in *In re E.I. du Pont de Nemours & Co.*"). Furthermore, these withheld documents indicate that there are likely a large number of responsive documents in Applicant's possession which he has failed to identify and produce. Accordingly, because Applicant's claim that it does not possess any additional documents responsive to Opposer's Document Request Nos. 9, 20, and 56 is demonstrably false, Applicant should be compelled to conduct a complete search for and produce all documents responsive to Opposer's Document Request Nos. 9, 20, and 56.

b. Third Party Communications (Request Nos. 9, 39, and 51)

Applicant and Applicant's agents have created many blogs, websites, forums, and/or discussions regarding Applicant's Mark, Opposer, Opposer's products, Opposer's Marks, and/or this opposition proceeding, including but not limited to the following websites and web pages:

- www.support.monsterfishkeepers.com,
- https://www.facebook.com/ISupportMonsterFishKeepers,
- https://www.facebook.com/groups/SupportMonsterFishKeepers/?fref=ts
- http://www.change.org/petitions/monster-energy-company-stop-trademarkbullying-monsterfishkeepers-com
- http://www.monsterfishkeepers.com/forums/forumdisplay.php?387-Support-amp-Defend-MonsterFishKeepers-com
- https://www.facebook.com/MonsterAquariaNetworks?ref=ts&fref=ts,
- http://www.aquariacentral.com/forums/forumdisplay.php?201-Support-amp-Defend-MonsterFishKeepers-com.

See id. at ¶¶ 5, 13, Exs. 4, 12. Applicant has not produced any printouts of any webpages on these websites, any documents relating to their creation, and has also even failed to disclose to Opposer the existence of most of these websites, despite their relevance to this opposition and

responsiveness to, inter alia, Opposer's Document Request Nos. 9, 39, and 51. *See* <u>id.</u> at ¶¶ 5, 10, 15, Exs. 4, 12. On these websites, customers and potential customers have communicated with Applicant, and made countless comments and inquiries, regarding Opposer, Opposer's Marks, and Opposer's products. *See* <u>id.</u>.

For example, on August 16, 2012, in response to a discussion thread Applicant created regarding this opposition proceeding and Opposition Proceeding No. 91205983, www.monsterfishkeepers.com member "Sarertnoc Kram" wrote: "The logo does look similar in all fairness say if we made a energy drink I could see people confusing the two." *See* <u>id</u>. at ¶ 13, Ex. 12. On September 1, 2012, on this same thread, www.fishkeepers.com member "gzeiger" wrote: "I dunno man, I love you guys, but looking at the logo I have to agree it's infringing." Id..

As another example, on July 17, 2012, "Sam Robinson," a member of the Facebook group Support MonsterFishKeepers Against Monster Energy, wrote: "signed and re-shared the petition.... I remember first seeing the drink a few years ago and thinking "Hey! They stole that from MFK!" Id. at ¶ 14, Ex. 13. Additionally, Opposer has identified evidence on Applicant's website located at https://www.facebook.com/groups/SupportMonsterFishKeepers/?ref=t s&fref=ts suggesting that Applicant has received emails and private messages responsive to Opposer's Document Request Nos. 39 and 51 regarding Applicant's Mark, Opposer, Opposer's Marks, Opposer's products, and/or this opposition. Id. at ¶ 14, Ex. 13. On July 28, 2012, Applicant, using his alias Li Neoprodigy, wrote: "I don't know what [Joshua Saul's] intention are ... but for the record he was the *first* person to email me [regarding the dispute between me and Opposer]... he gave some advice ... but guess he was digging some info. to write about...." Id. (emphasis added). Applicant's statement that Mr. Saul's email was the first he received suggests he has received more than one email regarding Applicant's mark, Opposer, Opposer's Marks, and/or Opposer's products.

These documents relate to the pending opposition and are directly responsive to Opposer's Document Request Nos. 9, 39, and 51. First, the comments by "Sarertnoc Kram,"

"gzeiger," and "Sam Robinson" tend to refute Applicant's statement that "Opposer's Marks have never and would never cause a likelihood of confusion.") <u>id.</u>, at ¶ 10, Ex. 9, p. 11 (emphasis added); and Applicant's statement that "[a]ll the comments [regarding an association between Applicant's goods and Opposer's products] Applicant is aware of **strongly refute**, rather than support, any likelihood of confusion claim Opposer may assert." Id. at Ex. 9, p. 12 (emphasis added). Second, the emails, private messages, and other non-public correspondence Applicant has sent and/or received regarding this opposition may contain admissions relevant to this opposition, and Opposer is entitled to inspect any such admissions.

Applicant was well-aware of such comments, inquiries, and communications, and has documents reflecting them in his possession since he created the websites, blogs, and forum threads, and either sent or received private messages and emails responsive to Opposer's discovery requests. Nonetheless, Applicant has repeatedly told Opposer that he has done a reasonably-thorough search and has no documents. Because Applicant's assertion that he has produced all responsive documents is demonstrably false, Applicant should be compelled to conduct a reasonably-thorough search to identify and produce documents responsive to Opposer's Document Requests.

V. INTERROGATORIES

1. <u>Applicant Should be Compelled to Fully Respond to Opposer's Interrogatory Nos. 16, 20, and 25</u>

Applicant's responses to Opposer's Interrogatory Nos. 16, 20, and 25 were due more than three weeks ago. Despite Opposer's requests that Applicant provide complete responses to Interrogatory Nos. 16, 20, and 25, Applicant has not served a complete response and has not provided any date when he intends to do so. Furthermore, the documents Opposer has identified that are likely in Applicant's possession also demonstrate that Applicant's Interrogatory Responses are incomplete and/or demonstrably false.

Interrogatory No. 16 seeks a description of all manners in which Applicant promotes its goods and services in connection with its marks. Sauter Dec. ¶ 2, Ex. 1. Applicant's response does not identify any ways in which Applicant promotes his goods and services and claims that

he "does not advertise or promote his Class 25 goods" that are the subject of this proceeding. Id. at ¶¶ 4, 10, Exs. 3, 9. This Response cannot be complete based on Applicant's responses to other interrogatories. For example, in response to Opposer's Interrogatory No. 16, Applicant states he "has spent approximately one hundred thousand dollars, (\$100,000), or more on advertising and promotion of Applicant's Mark since 2005 to the present." Id. at ¶¶ 4, 10, Exs. 3, 9. Similarly, in response to Interrogatory No. 11, Applicant identifies some of the ways he claims to promote his goods and services including "sell[ing] and distribut[ing] his goods and services through his website and at fish conferences and expositions, including the American Cichlid Association annual conference, the Catfish Convention, and the Stingray Symposium." Id. at ¶¶ 4, 10, Exs. 3, 9. Thus, Applicant has blatantly omitted information from his Response to Interrogatory No. 16.

Interrogatory No. 20 seeks all instances of any inquiry or comment regarding an association between Applicant and Opposer. <u>Id.</u> at \P 2, Ex. 1. Applicant's response references comments responsive to this Interrogatory but provides no substantive information about any of the comments other than that they are available on "Applicant's website and Facebook page . . ." <u>Id.</u> at \P 4, 10, Ex. 3, 9. As discussed above, that is not an appropriate ground to withhold information.

Interrogatory 25 seeks a description of the circumstances surrounding Applicant's

design. Applicant's Response states that he created the design in February 2013 for a patch for his child's jujitsu team. <u>Id.</u> at ¶¶ 4, 10, Exs. 3, 9. Applicant is contradicted by statements on his Facebook page where Applicant states that the design has been used on clothing worn by an athlete, Todd Levin, who was sponsored by Applicant. *See* <u>id.</u> at ¶ 14, Ex. 13. The design has also been used on Applicant'swww.monsterfishkeepers.com website

in connection with the phrase "MONSTER UNLEASHED!" See id. at ¶ 13, Ex. 12. Accordingly, Applicant's response to Interrogatory No. 25 is also incomplete.

Accordingly, Applicant should be compelled to immediately provide complete and accurate responses to Interrogatories Nos. 16, 20, and 25.

VI. <u>CONCLUSION</u>

Opposer's Motion to Compel should be granted as Applicant has failed to supplement Applicant's discovery responses to correct Applicant's discovery deficiencies and Opposer made a good faith attempt to resolve the matter. *See* 37 C.F.R. § 2.120 (e)(1); T.B.M.P. § 523.01.

Accordingly, Opposer requests the Board order Applicant to: (1) produce additional documents responsive to Opposer's Requests for the Production of Documents and Things Nos. 9, 20, 39, 51, and 56, (2) conduct a reasonably-thorough search to identify additional documents responsive to Opposer's Document Request Nos. 1-70, and (3) supplement Opposer's Interrogatories Nos. 16, 20, and 25. Pursuant to 37 C.F.R. § 2.120(e)(2), T.M.B.P. § 523.01, in light of this Motion to Compel, Opposer also requests that the Board suspend the opposition proceedings.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: Nue 12, 2013

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing <u>OPPOSER'S MOTION TO</u> <u>COMPEL</u> upon Applicant by depositing one copy thereof in the United States Mail, first-class postage prepaid, on June 12, 2013, addressed as follows:

EVE BROWN
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Sabrina Jacob

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